

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

HEARING ROOM A
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

EVENING SESSION
WEDNESDAY, OCTOBER 17, 2001
5:40 p.m.

Reported By:
James Ramos
Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William J. Keese, Chairman

Robert A. Laurie

Michal C. Moore

Robert Pernell

Arthur H. Rosenfeld

James Boyd, Ex Officio Member

STAFF PRESENT

Steve Larson, Executive Director

Bill Chamberlain, Chief Counsel

Bob Therkelsen, Deputy Director

Garret Shean, Hearing Officer

Kerry Willis

Jack Caswell

Paul Richins

Paul Kramer

Sandra Fromm

Jim Hoffsis

Rob Hudler

Robert Haussler

Todd Peterson

PUBLIC ADVISER

Roberta Mendonca

SECRETARIAT

Betty McCann

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1 P R O C E E D I N G S

2 ACTING CHAIRMAN MOORE: The delayed
3 meeting for the October 17th regular Business
4 Meeting of the California Energy Commission.

5 If we'd stand for the Pledge of
6 Allegiance, Commissioner Pernell will lead us in
7 that.

8 (Thereupon, the Pledge of Allegiance
9 was recited in unison.)

10 ACTING CHAIRMAN MOORE: Thank you all,
11 and I appreciate your indulgence in accommodating
12 our shifting schedules. We have Commissioners who
13 have been in a variety of places. I, for
14 instance, was in Washington yesterday.
15 Commissioner Keese is in Denver, I believe,
16 tonight, or will be in 40 minutes or so, and will
17 be joining us by phone.

18 Commissioner Laurie has been on a
19 mission to southern California, and will be coming
20 back to join us momentarily here on the dais.
21 We'll have four Commissioners. Commissioner Boyd
22 is here, so we -- we're pretty well staffed up,
23 except that for the items that are a little bit
24 controversial, or which members have expressed
25 some special interest, I'm going to try and take

1 those a little bit later, so that we can have as
2 much participation by members as we can. So that
3 means I'll go to the less controversial items, or
4 items that are more routine, and take them up.

5 And so let's start with the Consent
6 Calendar. Is there any interest in discussing an
7 item on consent, or is there a motion?

8 COMMISSIONER PERNELL: Mr. Chairman.

9 COMMISSIONER ROSENFELD: I move the --

10 ACTING CHAIRMAN MOORE: Commissioner
11 Pernell.

12 COMMISSIONER PERNELL: Second.

13 ACTING CHAIRMAN MOORE: He seconds the
14 motion of Commissioner Rosenfeld, which was
15 halfway to the dais when seconded.

16 Any discussion on the Consent Calendar?

17 All those in favor signify by saying
18 aye.

19 (Ayes.)

20 ACTING CHAIRMAN MOORE: Opposed?

21 The motion carries, three to zero.

22 Consent Calendar is approved.

23 We're going to pass over Item 2, and
24 Item 2 will probably be the subject of some
25 lengthy discussion by the members, and so it's

1 likely for -- for anyone who is here to discuss
2 that item, or to consider it, it's probably likely
3 to come up much later in the proceedings.

4 Let's move, then, I've been informed by
5 Counsel that if I don't take Item 13 next, I won't
6 have a lawyer for the renewables program, which
7 would be a big cost. So let's take up Item 13,
8 which is the Renewable Resource Trust Fund, and
9 possible approval of two funding agreements that
10 were awarded through our second auction through --
11 for new renewable resources, and we announced
12 those results long ago, in December 2000, are just
13 coming up.

14 And Jim, do you want to introduce those?

15 MR. HOFFSIS: Sure. This item is just
16 another in a continuing series of routine
17 approvals that we're seeking for funding award
18 agreements with winners in our Renewable Energy
19 Program auctions.

20 The two funding award agreements we're
21 seeking approval for are for wind projects that
22 are being developed by or have been developed by
23 Mountain Power Partners. One is 3.6 megawatts,
24 for about a \$380,000, and the other is 1.8
25 megawatts, for \$190,000. They've achieved all

1 their milestones, and have passed all their
2 environmental reviews, and are -- have come online
3 as of October 3rd.

4 So we're just formalizing the -- the
5 agreements by which we can begin paying them.

6 ACTING CHAIRMAN MOORE: And this is in
7 accordance with our existing guidelines.

8 MR. HOFFSIS: Exactly. Yes.

9 ACTING CHAIRMAN MOORE: All right. In
10 fairness, I should say that when we opened this
11 meeting this morning, although we did not have a
12 quorum, we had an individual who was here from
13 Scotia, from the biomass plant there, who wanted
14 to voice a concern that the Renewable
15 Energy Program in its last auction, and the intent
16 to award for the auction, had basically selected
17 only large providers. And, in fact, we had
18 ignored some of the smaller providers that were
19 out there, and that we ought to re-think that
20 policy.

21 And I informed him that the Committee
22 would take that up as a policy matter at the
23 Committee, and that we would discuss it at our
24 next meeting, and that we would have it in mind as
25 we design the next set of rules for any future

1 auctions, and that we would attempt to build in as
2 much flexibility as possible.

3 Certainly there are small segments of
4 that market that we don't want to see go under.
5 We certainly want to give them every advantage to
6 come up and participate in the market as we can.
7 So to the extent that there might have been an
8 oversight, or to the extent that the rules might
9 have to be adjusted in order to target that kind
10 of an audience, I promised him that we would take
11 it up.

12 So, John Prevost, if you're out there
13 listening to this on the Webcast, you have my
14 assurance that the Committee will take that up.

15 Can I have a motion on Item 13(a) and
16 (b) .

17 COMMISSIONER ROSENFELD: I move 13(a)
18 and (b) .

19 ACTING CHAIRMAN MOORE: Moved by
20 Commissioner Rosenfeld.

21 COMMISSIONER PERNELL: Second.

22 ACTING CHAIRMAN MOORE: Second by
23 Commissioner Pernell.

24 Is there discussion on the motion?

25 Is there anyone of the public here who

1 wants to discuss the nature of the awards, or the
2 guidelines that we're using in which to evaluate
3 them?

4 Seeing none, all those in favor of the
5 motion signify by saying aye.

6 (Ayes.)

7 ACTING CHAIRMAN MOORE: Those opposed?

8 That motion carries, three to zero.

9 Item 14, the Strategic Energy
10 Innovations item, has been moved to the October 31
11 Business Meeting. It will be taken up at that
12 time.

13 Item 15, the Truewind Solutions, LLC.
14 That's Contract 500-01-009 for \$150,000 to develop
15 high resolution annual and seasonal wind resource
16 maps for California.

17 Do we have Staff report on that item?

18 All right. The -- let me go back and
19 review that. That is a background item that we've
20 been looking for for some time to try and give
21 wind developers an advantage in bringing projects
22 to us by knowing where to locate them, where the
23 most efficient areas to locate are, and we're
24 going to fund those using PIER funds. So it has
25 been through the RD&D Committee, and comes to us

1 with a recommendation for the award of this sole
2 source contract.

3 Discussion. The Chair will entertain a
4 motion.

5 Moved by Commissioner Rosenfeld --

6 COMMISSIONER PERNELL: Second.

7 ACTING CHAIRMAN MOORE: -- Presiding
8 Member of the PIER program. Second by
9 Commissioner Pernell.

10 All those in favor signify by saying
11 aye.

12 (Ayes.)

13 ACTING CHAIRMAN MOORE: The motion
14 carries.

15 We've been joined by Commissioner
16 Laurie. Welcome, and hope your plane trip was an
17 easy one.

18 COMMISSIONER LAURIE: I'm here.

19 ACTING CHAIRMAN MOORE: All right.

20 COMMISSIONER LAURIE: And I apologize,
21 and I thank you for your cooperation, fellow
22 Commissioners and members of the public.

23 ACTING CHAIRMAN MOORE: All right. I
24 need to make an announcement, and that is that
25 because this is an evening meeting, and given the

1 change in security that we've had in all segments
2 of all of our lives -- I don't need to go over
3 that -- when you exit the building, you have to
4 exit on the P Street side, which is the side on
5 the south end of the building, and/or see the
6 security guard in order to go to the Ninth --
7 through the Ninth Street exit. So either way, you
8 can get out. But if you want to -- if you're bent
9 on going out on the Ninth Street side, then you
10 need to see the security guard. Having us as an
11 escort isn't going to give you any advantage in
12 this. I'm telling you that as a fact.

13 All right. Let's go to Item 16, which
14 is Sierra Energy and Risk Assessment. Many of you
15 may have had a briefing, but I'd like to have Todd
16 Peterson introduce the item. This is a follow-on
17 to our Natural Gas Infrastructure Report and
18 recommendations that the Commission passed, and
19 which were actually just presented to -- in a
20 congressional hearing yesterday, in Washington.

21 So this is the next step in trying to
22 understand how fragile any piece of our system is,
23 and what perturbations that could occur might
24 occur, and what effect they might have, if they
25 did.

1 Todd.

2 MR. PETERSON: Yes. Thank you.

3 ACTING CHAIRMAN MOORE: You have to
4 speak right into the microphone. I mean right
5 into the microphone.

6 MR. PETERSON: This item is for a
7 contract of \$65,000. As was stated, this work
8 would be in helping and assisting in estimating
9 the probabilities of climatic events in such as a
10 dry year, or an adverse cold day, maybe even some
11 combinations, of occurring here in California or
12 in the Western U.S., to help us analyze and
13 determine the natural gas infrastructure design
14 criteria, and reliability standards to provide
15 higher levels of slack capacity.

16 This research -- analysis comes from the
17 Commission's Natural Gas Infrastructure Report,
18 and is up for approval with the Commission.

19 ACTING CHAIRMAN MOORE: Thank you. We
20 have an excellent consultant to conduct the work
21 for us who, should this contract pass tonight,
22 will be meeting with Staff to discuss the
23 parametrics of that contract and the timing of it
24 on Friday.

25 MR. PETERSON: That is correct.

1 ACTING CHAIRMAN MOORE: This is a very
2 fast track item, and it will be the focus of a
3 special workshop in December --

4 MR. PETERSON: Yes, at the same --

5 ACTING CHAIRMAN MOORE: -- that'll be
6 conducted by the Committee, and which will then, I
7 hope, be used as part of the FERC examination of
8 gas infrastructure in the west. So we're working
9 very closely with not only the PUC but with our
10 federal counterparts to develop tools and
11 information that can help make the strategic map
12 of how things are working a lot more current, and,
13 frankly, a lot more useful.

14 Are there questions for Mr. Peterson?

15 EX OFFICIO MEMBER BOYD: Mr. Chairman.

16 ACTING CHAIRMAN MOORE: Mr. Boyd.

17 EX OFFICIO MEMBER BOYD: Well, just --
18 just a question of the organization, I guess.
19 Serving on the Natural Gas -- the secretary's
20 Natural Gas group for the better part of the year
21 now, and then serving on the Climate Change
22 Working Group for almost two years now, I've had
23 an awful lot of information provided on weather,
24 the effects of weather, so on and so forth. And I
25 just want to make sure that in reaching outside

1 for a consultant we've also reached across
2 organizational lines to our sister departments,
3 boards and commissions, and what have you, because
4 there's a -- there's a wealth of information on
5 the subject, particularly being collected by the
6 Department of Water Resources, which is working on
7 its so-called Bulletin 160, which is the -- the
8 California Water Plan bulletin series. They've
9 done an awful lot of work with folks on this
10 subject.

11 So just -- just to make sure that the
12 more the merrier, perhaps, but to make sure that
13 we're not re-inventing something here, or plowing
14 the same ground a couple of times. I'd just like
15 to make sure the Staff is talking to those folks.

16 ACTING CHAIRMAN MOORE; Well, I'm very
17 happy that you brought that up, because one of our
18 intentions, and, really, the reason that this is
19 coming almost a month late to you, is the fact
20 that we've been trying to reach out and make sure
21 that we are closing all those loops, and that the
22 various organizations are involved in helping to
23 design this.

24 I think that the task that's set out for
25 the consultant is unique enough and will produce a

1 unique enough product that it'll be useful by
2 Water Resources, as well as the other agencies.
3 But you raise a very good point of organizational
4 connection.

5 I'll move the item on behalf of the
6 Committee. I'm very pleased to do that. I think
7 that it's going to turn out to be a very robust
8 analysis.

9 COMMISSIONER ROSENFELD: Second.

10 ACTING CHAIRMAN MOORE: Second by
11 Commissioner Rosenfeld.

12 All those in favor -- I'm sorry. Let me
13 turn out and ask, is there anyone in the public
14 who wishes to address us on the item that's on the
15 floor?

16 Seeing none, all those in favor of the
17 item signify by saying aye.

18 (Ayes.)

19 ACTING CHAIRMAN MOORE: Those opposed?

20 That motion carries, four to zero.

21 We're going to take Item 12 at the
22 request of Commissioner Pernell. City of Santa
23 Monica, Commission consideration and possible
24 approval of the City of Santa Monica's Application
25 for a Local Energy Standard that exceeds Title 24

1 Part 6 standards that were adopted by this
2 Commission on April 4th, this year, and effective
3 June 1st.

4 Rob.

5 COMMISSIONER PERNELL; Mr. Chairman.

6 ACTING CHAIRMAN MOORE: Oh, I'm sorry.
7 Commissioner Pernell.

8 COMMISSIONER PERNELL: By way of
9 introducing the item, this came before the Energy
10 Efficiency Committee, and we certainly commend the
11 City of Santa Monica for -- for their own local
12 energy standards that exceeds Title 24. And the
13 Committee found that the technical and reporting
14 requirements under Section 10-106 and Section 10-
15 110 of the Energy Efficiency Standards has been
16 met.

17 So we -- the reason I wanted to
18 introduce this, because I think that the City of
19 Santa Monica is very progressive in their local
20 energy standards, and they're certainly leading
21 the way.

22 If I've missed anything, we do have
23 Robert here to add to any -- I'm assuming it's
24 Robert --

25 ACTING CHAIRMAN MOORE: Mr. Hudler.

1 MR. HUDLER: Close enough. I believe
2 Commissioner Pernell has covered all the points,
3 unless there's questions.

4 ACTING CHAIRMAN MOORE: And this comes
5 to us with a recommendation from the Committee.

6 COMMISSIONER PERNELL: Yes, Mr.
7 Chairman. I would -- I would so move the city's
8 application.

9 COMMISSIONER ROSENFELD: I second.

10 ACTING CHAIRMAN MOORE: Motion by
11 Commissioner Pernell, second by Commissioner
12 Rosenfeld.

13 Is there discussion on the motion?

14 All those in favor signify by saying
15 aye.

16 (Ayes.)

17 ACTING CHAIRMAN MOORE: Those opposed?

18 That motion carries, four to zero.

19 Thank you, Mr. Hudler.

20 MR. HUDLER: Thank you.

21 ACTING CHAIRMAN MOORE: All right.

22 We're going to take up some of the facility
23 requests that are in front of us. Let's go to
24 Item 3, which is the Roseville Energy Facility.
25 Commission consideration of the Executive

1 Director's Data Adequacy Recommendation for
2 Roseville, their Energy Facility Application for
3 Certification. A 12-month project, 900
4 megawatts, located west of the City of Roseville,
5 Docket Number 01-AF-14.

6 Good evening, Mr. Shaw.

7 MR. SHAW: Yes. Good afternoon,
8 Commissioners and audience.

9 ACTING CHAIRMAN MOORE: No, evening.
10 You -- you've -- I think you've transitioned into
11 evening.

12 MR. SHAW: Okay. Good evening. This is
13 a dinner meeting.

14 Commissioners and audience, I'm Lance
15 Shaw. Sitting to my right is Kerry Willis, Staff
16 Counsel, and the Staff Project Manager, and Kirk
17 Sornborger, from Western Area Power Administration
18 is also back there. This is a joint project.

19 ACTING CHAIRMAN MOORE: Way back there.

20 MR. SHAW: Way back there.

21 On August 10, 2001, Roseville Energy
22 Facility LLC, a wholly owned subsidiary of Enron
23 North America Corp., filed an Application for
24 Certification for a nominal 900 megawatt power
25 plant called the Roseville Energy Facility. The

1 proposed site is approximately five miles
2 northwest of downtown Roseville, is approximately
3 1.5 miles west of Sun City Roseville. The site is
4 a 22 acre parcel owned by the City of Roseville.
5 The project would use an adjacent 21 acre parcel
6 as a lay-down area for construction, which is also
7 owned by the city.

8 The proposed site is less than .1 miles
9 north of the City of Roseville Pleasant Grove
10 Wastewater Treatment Plant, which is scheduled to
11 be operational in late 2002 or early 2003. The
12 treatment plant will be the source of the
13 project's 3300 gallon per minute plant water
14 supply. It will be a zero liquid discharge
15 system. Potable water, approximately 28,800
16 gallons per day, will be supplied by the City of
17 Roseville via a new waterline that's approximately
18 2.9 miles.

19 Natural gas will be supplied by a line
20 tapped into the PG&E line, approximately five
21 miles southeast of the plant site. Power
22 generated will go to the Western Area Power
23 Administration's substation via a new 230 kV line
24 approximately ten miles in length. Since this
25 ties in with Western's Roseville substation,

1 southeast site, there will be a joint review of
2 this project with Western, and Western will be the
3 lead federal agency.

4 If the plant is approved by the Energy
5 Commission, the Applicant plans to complete
6 construction of the power plant over a period of
7 approximately 24 months. Based on construction
8 beginning fourth quarter of '02, the plant would
9 be in full operation approximately fourth quarter
10 '04. Estimated cost to construct the facility,
11 between about 350 and \$450 million dollars. It is
12 proposed as a 12-month AFC.

13 CEC will be working jointly with Western
14 under a memorandum of understanding similar to
15 what was done on the Blythe project, the Rio
16 Linda/Elverta project, and so it will be a joint
17 CEQA/NEPA review.

18 Our Staff has reviewed the application
19 and its four subsequent supplements, and has found
20 it to be data adequate. We recommend that you
21 find the AFC data adequate as the Executive
22 Director's letter recommends.

23 ACTING CHAIRMAN MOORE: Thank you very
24 much.

25 Let's hear from the Applicant about the

1 project, and I think I'd like to have something on
2 the record from Western about the role that they
3 expect to play and the timing, commitment to
4 timing, I guess is a better way to put it, that
5 they expect to be able to devote to this. One of
6 the -- one of the problems, and I think I'm -- I'm
7 probably not saying anything out of school -- that
8 is throwing some of the projects off schedule is
9 the relationship with the federal government and
10 its various agencies. So I think it -- to the
11 extent possible, I'd like to know what those
12 intended relationships are up front.

13 Counsel.

14 MR. THOMPSON: Thank you, Mr.
15 Commissioner. We -- I don't want to add too much.
16 Getting a recommendation of data adequacy, I
17 certainly don't want to undo that by any remarks I
18 may make.

19 ACTING CHAIRMAN MOORE: We can't. I
20 mean, that's -- it's not --

21 (Laughter.)

22 ACTING CHAIRMAN MOORE: -- all you have
23 to do is ask.

24 MR. THOMPSON: We -- we appreciate the
25 work of the Staff, and appreciate the data

1 adequacy finding, and we fully intend to complete
2 this process to the best that we can, working with
3 Staff and other agencies within the 12-month
4 period. We selected the 12-month period because
5 we thought that certain complexities in this power
6 project really required more time than an
7 expedited proceeding, and I believe, Commissioner
8 Moore, that you're correct in singling out one of
9 them, which is -- which is the transmission issue.

10 As -- as you all well know, there are a
11 number of projects that want to connect to the
12 Western grid within that Sacramento area. This is
13 going to be a task for both the Western and the
14 Commission to evaluate. You know, we want to
15 participate in that, but that process, as an
16 example, is not without its difficulties.

17 Having said that, we are committed to
18 working through to a satisfactory conclusion
19 within the time limit, and we want to thank you
20 all.

21 ACTING CHAIRMAN MOORE: Sam, did you
22 want to add anything to that?

23 MR. WEHN: That was so well done I don't
24 think I could add anything to -- to help this
25 along.

1 ACTING CHAIRMAN MOORE: Good enough.

2 Can we ask Western's representative to
3 come on up and talk to us about the -- the role
4 that Western expects to play in this, and a little
5 bit of the -- I can't get you to commit for your
6 bosses on the amount of time that they're going to
7 allot for this, but perhaps we can get an idea of
8 what the staff commitment that's available is.

9 Why don't you introduce yourself for the
10 record.

11 MR. SORNBORGER: Thanks. Kirk
12 Sornborger. I'm from Western Area Power
13 Administration.

14 Western has had meetings with -- with
15 Lance, and with program managers from two other
16 applicants, and we have discussed schedule in
17 depth. And we feel that we can support the
18 schedule that's put out by -- by Staff for this
19 project, and for all projects.

20 ACTING CHAIRMAN MOORE: And in terms of
21 the liaison with other agencies where you end up
22 being the lead for the federal government --

23 MR. SORNBORGER: Yes.

24 ACTING CHAIRMAN MOORE: -- the -- what's
25 the designation under CEQA --

1 MR. SORNBORGER: We're --

2 ACTING CHAIRMAN MOORE: -- NEPA.

3 MR. SORNBORGER: -- we're the lead
4 federal agency.

5 ACTING CHAIRMAN MOORE: So lead federal
6 agency. How much ability do you have to move some
7 of the other agencies, such as Fish and Wildlife?
8 I mean, are -- are you communicating with them on
9 -- because we don't have a -- a strong role when
10 you're in that lead agency status.

11 MR. SORNBORGER: Yes, we are in
12 communication with them. As a matter of fact,
13 we've taken steps towards accelerating their
14 responses. We've -- we've funded them to
15 designate a individual, one individual for these
16 interconnection projects.

17 ACTING CHAIRMAN MOORE: They've
18 transferred funding -- funding to them? This
19 could be a novel approach to how to get the
20 federal government involved, move money back to
21 the federal --

22 MR. SORNBORGER: Well, I hope I don't
23 speak out of turn, or get anyone into trouble,
24 but, yeah, you know. We're -- we're taking care
25 of that, and -- and I'm down there weekly.

1 ACTING CHAIRMAN MOORE: Okay. This is a
2 year project, so timing -- it only becomes evident
3 that you're out of time when you're at the end, or
4 when you're in the evidentiary hearings and you
5 don't have all the -- all the documents in front
6 of you, and heaven knows, many of us have been in
7 that position. So I look to the Committee, I'll
8 be looking from the outside when this happens, but
9 to do a good job on it.

10 Thank you very much.

11 Is there anyone here who would like to
12 address this from the public or the community,
13 about the Roseville project?

14 All right. The Chair will entertain a
15 motion on the Executive Director's recommendation.

16 COMMISSIONER LAURIE: Mr. Chairman, I
17 move the Executive Director's recommendation.

18 ACTING CHAIRMAN MOORE: Moved by
19 Commissioner Laurie.

20 COMMISSIONER ROSENFELD: Second.

21 ACTING CHAIRMAN MOORE: Second by
22 Commissioner Rosenfeld.

23 The motion by Commissioner Laurie, under
24 our rules, moves him into first place, by the way,
25 for consideration on the Committee.

1 COMMISSIONER LAURIE: I withdraw my
2 motion.

3 (Laughter.)

4 ACTING CHAIRMAN MOORE: All those in
5 favor of the motion signify by saying aye.

6 (Ayes.)

7 ACTING CHAIRMAN MOORE: Those opposed.

8 That motion carries, four to zero. And
9 despite the withdrawal, I'm going to assign
10 Commissioner Laurie to preside on the case, and
11 Second Member, Commissioner Keese, who can't fight
12 back because he's still on a jet somewhere.

13 COMMISSIONER PERNELL: Mr. Chairman, I
14 would move those recommendations.

15 ACTING CHAIRMAN MOORE: I thought you
16 would.

17 COMMISSIONER ROSENFELD: Second.

18 ACTING CHAIRMAN MOORE: Second by
19 Commissioner Rosenfeld.

20 Discussion on the Committee? Thank you.

21 All those in favor signify by saying
22 aye.

23 (Ayes.)

24 ACTING CHAIRMAN MOORE: Opposed?

25 That motion carries, four to zero.

1 Thank you very much.

2 We will take up Item 5, and potentially
3 Item 6. Item 5 is the SMUD Cosumnes Power Plant
4 Project. It's the Commission consideration of the
5 Executive Director's Data Adequacy Recommendations
6 for the SMUD application. This is a 12-month,
7 1,000 megawatt power plant located in the County
8 of Sacramento, Docket Number 01-AFC-19.

9 Ms. Fromm, welcome, and the floor is
10 yours.

11 MS. FROMM: Good evening. I'm Sandra
12 Fromm, Staff Siting Project Manager.

13 On September 13th, 2001, Sacramento
14 Municipal Utility District filed the Cosumnes
15 Power Plant 12-month Application for
16 Certification, seeking approval from the Energy
17 Commission to construct and operate a nominal
18 1,000 megawatt power plant at the Rancho Seco
19 site. Staff reviewed the AFC and found the
20 project to be data inadequate, and recommends the
21 Commission find the project data inadequate and
22 adopt the list of deficiencies.

23 ACTING CHAIRMAN MOORE: Do you want to
24 review some of the deficiencies, just highlight
25 them?

1 MS. FROMM: There were nine areas of
2 deficiency, Air Quality, Biology, Cultural, Noise,
3 Soils, Transportation, Transmission System
4 Engineering, Visual, and Water.

5 ACTING CHAIRMAN MOORE: And I understand
6 that there's been some active negotiation by the
7 Applicant and with Staff to try and overcome those
8 as -- as late as today, so that there's been
9 active involvement in trying to resolve this.

10 MS. FROMM: Correct.

11 ACTING CHAIRMAN MOORE: Today.

12 MS. FROMM: Correct.

13 ACTING CHAIRMAN MOORE: Thank you.

14 COMMISSIONER PERNELL: Has there been
15 any progress on the resolution of some of those
16 areas?

17 MS. FROMM: Yes. I believe --

18 ACTING CHAIRMAN MOORE: Actually, you've
19 gone from a long list to -- to the nine, haven't
20 you?

21 MS. FROMM: Well, I think it was maybe
22 one issue area longer, so it was ten. Now it's
23 nine. And we removed some of the items from the
24 nine areas that are remaining.

25 I believe the Applicant wants to

1 comment.

2 ACTING CHAIRMAN MOORE: Steve, the floor
3 is yours.

4 MR. COHN: Thank you. Steve Cohn, on
5 behalf of the Sacramento Municipal Utility
6 District. Always a pleasure to return home here,
7 to this Commission.

8 ACTING CHAIRMAN MOORE: I forgot to say
9 welcome home.

10 (Laughter.)

11 COMMISSIONER PERNELL: But that's not
12 going to get your item --

13 (Laughter.)

14 ACTING CHAIRMAN MOORE: Forgetting my
15 manners.

16 MR. COHN: I tried, you know.

17 ACTING CHAIRMAN MOORE: Well, it got you
18 the floor. I mean, you have the floor.

19 MR. COHN: Let me introduce, before I
20 comment on the data adequacy, just a few of the
21 other members of our team that you'll be seeing
22 over the course of hopefully the next less than 12
23 months.

24 I have Jane Luckhardt, with Downey
25 Brand, who will be helping me, and hopefully we'll

1 minimize the number of legal issues to bring
2 before the Commission. Lourdes Jimenez Price, a
3 colleague of mine at SMUD; Kevin Hudson, Project
4 Manager; and then John Carrier, with our
5 consultant, CH2MHILL, who's the lead project
6 manager in preparing the AFC.

7 I want to thank Sandra and the CEC Staff
8 for working very hard to get this before you. I
9 think the reason we're here data inadequate is
10 that the 45-day period actually falls almost two
11 weeks from now, so we're here just a little bit
12 prematurely, under the regulation, so you need to
13 have this hearing within 45 days. And I think
14 we've worked things out, hopefully, so that by the
15 end of this week or -- or very shortly thereafter
16 we should be able to satisfy the deficiencies that
17 are noted in the Staff's list.

18 We did want to clarify one area that we
19 spoke with Staff just before coming in here, where
20 Staff had asked for an assessment of impacts from
21 the project's proposed water use on other users of
22 overdrafted CVP water. And I think we've
23 clarified what's intended there. We have a
24 contract for 60,000 acre/feet a year of water from
25 the Bureau of Reclamation, and it's not due to

1 expire until 2012, and, in fact, we have a binding
2 agreement to renew that as a municipal water
3 supply user. And I think what Staff is looking
4 for is for us to clarify what -- how the process
5 works with the Bureau. I don't think there's any
6 intent to have us actually try to bring that
7 entire allocation process into this CEC siting
8 process.

9 So I think given that clarification, we
10 should be able to also bring that area into data
11 adequacy. And what we're hoping is to be back
12 before you two weeks from now, on October 31st,
13 where we can both agree that the document will be
14 data adequate.

15 ACTING CHAIRMAN MOORE: Well, you know,
16 before we let that off the table let's turn to
17 Staff, and just ask is that your understanding of
18 what you're asking for?

19 MS. FROMM: Yes, it is.

20 ACTING CHAIRMAN MOORE: Did he -- he
21 fairly characterized it --

22 MS. FROMM: Correct.

23 ACTING CHAIRMAN MOORE: -- for Staff.

24 Okay.

25 COMMISSIONER PERNELL: One other

1 question. Steve, as I understand it, two weeks
2 from now will be your drop dead date within the
3 regulations that you so duly pointed out.

4 MR. COHN: Well, actually, the -- it
5 turned out it was two days before the next
6 Business Meeting, which is why we're actually here
7 today. But the -- the requirement was we had to
8 go ahead and have the hearing today under your
9 regulations, but if we can get this resolved and
10 bring it back before you, that would've actually
11 been the closest Business Meeting to the 45-day
12 period, anyway. So, hopefully, we'll be right on
13 track.

14 And I can tell you we're very excited
15 about this project and getting that Rancho Seco
16 site back in productive use, and we've actually
17 already entered into agreements to purchase all
18 the major moving equipment, turbines, steam and
19 combustion, so we're real excited about this
20 project.

21 ACTING CHAIRMAN MOORE: For --

22 COMMISSIONER PERNELL: And but --

23 ACTING CHAIRMAN MOORE: Go ahead.

24 COMMISSIONER PERNELL: Excuse me, Mr.

25 Chairman. Just -- just one final question that I

1 probably should know. Mr. Larson, are we having a
2 Business Meeting next week, or -- we've been
3 having these every week, so I guess my question
4 is, are we going to have it before two weeks?

5 ACTING CHAIRMAN MOORE: Well, I think we
6 -- we have the discretion to extend the deadline,
7 and so we can pick up the two days if that's what
8 it takes to do and still find it.

9 MR. COHN: And -- and I think, you know
10 Staff may need some time to review the material we
11 give them the end of the week. But we're -- we're
12 satisfied with October 31st.

13 ACTING CHAIRMAN MOORE: Okay. Well, I
14 -- I think, Steve, considering the sensitivity of
15 the site and all the issues that have gone before,
16 you can understand that we want to make sure that
17 in every stage of this, every "t" is crossed,
18 every "i" is dotted. This is a very visible
19 project, and a very important one. So we want to
20 make sure that it's -- it's treated exactly right
21 in the whole process.

22 All right. Let me entertain a motion on
23 the Executive Director's recommendation.

24 MS. FROMM: Excuse me. Actually, I
25 believe Bob Haussler has a comment.

1 ACTING CHAIRMAN MOORE: Mr. Haussler.

2 MR. HAUSSLER: Yes. Thank you, if I
3 may. I wanted to clarify a little bit the -- the
4 concern raised by the Applicant concerning water
5 and the impacts of the water use.

6 Their concern was, is that in asking for
7 information on the impacts of use of the cooling
8 water for the plant, that Staff was concerned
9 about the environmental impacts that result in the
10 entire allocation system of the U.S. Bureau of
11 Reclamation, and that there could be the potential
12 to re-litigate what has occurred in terms of
13 allocation of water within the Bureau of
14 Reclamation's authority for the Central Valley
15 Project.

16 Certainly it's not Staff's intention to
17 address that broad a concern. And we're merely
18 certainly interested in what SMUD knows about the
19 acre/feet of water, approximately 9,000 acre/feet,
20 up to 9,000 acre/feet that they would use to cool
21 this facility. And to that end, we believe SMUD
22 is willing to supply information concerning their
23 arrangements for that water, and Staff certainly
24 may assess the impacts of that from the
25 information they're able to provide, and that we

1 can obtain from -- from other sources, including
2 the Bureau.

3 So I think with that, that's probably
4 enough said. But I just wanted to make sure that
5 the Commission understood the -- what the kind of
6 concern did exist concerning our regulations for
7 impacts of proposed water use.

8 ACTING CHAIRMAN MOORE: Thank you.
9 Appreciate the clarification.

10 The Chair will entertain a motion on the
11 Executive Director's recommendation.

12 COMMISSIONER LAURIE: Point of inquiry,
13 Mr. Chairman. You --

14 ACTING CHAIRMAN MOORE: Sure.

15 COMMISSIONER LAURIE: You made the
16 comment we have the power to extend the deadline.
17 What deadline are you talking about?

18 ACTING CHAIRMAN MOORE: Well, I'm
19 talking about the action within 45 days. That we
20 can take it up --

21 COMMISSIONER LAURIE: Can -- can we do
22 that? I always thought we had to take action and
23 then just continue, keep the record open and
24 continue the item until --

25 ACTING CHAIRMAN MOORE: We -- if we turn

1 it down tonight, that's what we would be doing.
2 That's why I said that the -- the item is not --
3 it's not an issue.

4 MR. COHN: Right. No, we agree, that's
5 why we're here tonight. And we would've just as
6 soon be here in two weeks and had it all
7 straightened out, but because of the regulation it
8 was necessary to take action tonight.

9 COMMISSIONER LAURIE: I would -- I would
10 defer to Commissioner Pernell for a motion, Mr.
11 Chairman.

12 ACTING CHAIRMAN MOORE: Commissioner
13 Pernell.

14 COMMISSIONER PERNELL: Well, I don't
15 know. Mr. Cohn came in kind of strange.

16 No, Mr. Chairman, I would move the
17 Executive Director's recommendation.

18 COMMISSIONER LAURIE: Second.

19 ACTING CHAIRMAN MOORE: There is a
20 motion on the floor to observe the Executive
21 Director's recommendation to find this data
22 inadequate.

23 All those in favor signify by saying
24 aye.

25 (Ayes.)

1 ACTING CHAIRMAN MOORE: Those opposed?

2 The motion carries. There will be no
3 Committee assignment until such time as it is
4 found data adequate.

5 Thank you all.

6 MR. COHN: All right. Thank you.

7 ACTING CHAIRMAN MOORE: All right.

8 Let's take up the Item 7, GWF Energy, LLC,
9 Henrietta Peaker Project. We have a data adequacy
10 recommendation from the Executive Director on this
11 project, a four-month, 91.4 megawatt power plant
12 located in Kings County, Docket 01-AFC-18.

13 COMMISSIONER LAURIE: Point of inquiry,
14 Mr. Chairman.

15 ACTING CHAIRMAN MOORE: Commissioner
16 Laurie.

17 COMMISSIONER LAURIE: I -- I would ask
18 and make inquiry as to whether or not we have to
19 take up Item 2 before we take up Item -- Item 6
20 and Item 9.

21 ACTING CHAIRMAN MOORE: Are -- are they
22 not applicable?

23 MS. FROMM: Yes. No, the Henrietta
24 Project does involve the issue of conversion, or
25 non-conversion after three years, for the four-

1 month process, so we would request that the
2 overall policy issue be addressed before the
3 project itself be addressed.

4 ACTING CHAIRMAN MOORE: And that's true
5 of Item Number 9, as well.

6 MS. FROMM: Yes, it is.

7 ACTING CHAIRMAN MOORE: Thank you. And
8 -- okay, I don't think it's true of -- well, let's
9 see. It wouldn't be true of -- of 11, for --
10 well, I'll tell you what. Let's just defer --

11 COMMISSIONER LAURIE: No, 11 is -- 11 is
12 a different issue.

13 ACTING CHAIRMAN MOORE: Yeah. But it --
14 just that it involves the -- the idea. But I
15 guess it will lead us into it, so let's -- let's
16 take Item 11. And that'll lead us into the
17 discussion of Item 2, and then we'll come back to
18 the other -- the other four-month, or proposed
19 four-month projects.

20 So let's take up Item 11, the Valero
21 Cogeneration Project, 01-AFC-5. It's the
22 Commission consideration and possible adoption of
23 the Presiding Member's Proposed Decision for the
24 Valero Cogeneration Project. It's a four-month,
25 102 megawatt power plant located in the City of

1 Benicia, in Solano County.

2 (Inaudible asides.)

3 HEARING OFFICER SHEAN: We have a good
4 little project here, 102 megawatt cogeneration
5 project to be built in two phases at the Benicia
6 Refinery of the Valero Company. The effect of
7 that is the first 51 megawatts will take the
8 refinery off the grid. It will also use refinery
9 fuel gas as its principal fuel, backed up by
10 natural gas as necessary, either based upon the
11 availability of the refinery fuel gas or to the
12 land with the refinery fuel gas to meet air
13 quality emission standards.

14 By virtue of its being contained within
15 the existing refinery it has relatively few
16 environmental and community impacts. But we have
17 had discussion and active participation among
18 several parties related to that, and let me just
19 introduce them.

20 They would be the City of Benicia,
21 represented by Brenda Galardi and Kitty Hammer,
22 and the city is here. The Good Neighbor Steering
23 Committee, Dana Dean. I will say to the credit of
24 Valero that the Good Neighbor Steering Committee
25 and the Good Neighbor Policy pre-dated the

1 application for this particular project, so that
2 Valero does have an ongoing relationship with the
3 community to attempt to be a good neighbor and
4 solve issues that are arising from the operation
5 of the refinery. And this essentially dovetailed
6 with that.

7 We have also CURE, represented both by
8 Mark Wolfe and Marc Joseph, and they participated
9 actively. Valero is here, represented by Sam
10 Hammonds and Karen Nardi, and also Lynn McGuire,
11 who is their chief consultant.

12 The Staff, by Jack Caswell and Paul
13 Kramer, did an outstanding job in terms of moving
14 this forward during the Staff's phase of the
15 proceedings. And we have also here Doug Hall, who
16 is from the Bay Area Air Quality Management
17 District. And I think that it's fair to say that
18 the -- the district became the focus of most of
19 the issues related to the proceeding, and the air
20 quality ones were the most hotly debated.

21 But we have solved noise issues, by
22 virtue of taking before and after surveys, that
23 will assure that both the construction and
24 operation of the facility will not have an impact
25 upon the community. The -- Valero is to use

1 whatever technology it can attempt to find, and
2 it's by no means certain that they will find it,
3 but they will attempt to find, for purposes of
4 steam blow, the technology which will impact the
5 community the least.

6 Traffic, potential traffic impacts have
7 been mitigated by a cooperative pact between the
8 city and Valero, so that not only with the
9 construction of this particular project, but the
10 cumulative potential impact of the MTBE phase-out
11 and what the refinery calls turn-arounds, which
12 are both scheduled and unscheduled repairs at the
13 refinery, will not cause unacceptable levels of
14 congestion at the refinery.

15 We did have a protracted proceeding with
16 regard to the Preliminary and the Final
17 Determination of Compliance. I think it's fair to
18 characterize this as follows, that CURE had raised
19 some issues with respect to the use of the
20 refinery fuel gas, which we learned, as we went
21 along, contains more sulfur, and for that reason
22 may have been problematic with regard to certain
23 matters related to sulfur. The EPA became
24 interested in the matter, and after the issuance
25 of the Preliminary Determination of Compliance

1 there was extensive review and discussions among
2 the parties, and Valero was forthcoming with
3 respect to agreeing to conditions that will, I
4 think, push the frontier on the use of refinery
5 fuel gas.

6 But it obviously makes sense to do this.
7 This fuel that's produced by the operation of the
8 refinery, if it's not used for this, which is a
9 beneficial purpose, it would have to either be
10 used for some other purpose and you would be
11 compounding the emissions, or it would have to be
12 flared, which I think we all agree would be an
13 unfortunate and basically unacceptable choice.

14 That essentially presents the substance
15 of the case which is before you. To the extent
16 that there are remaining issues, they're largely
17 procedural. They relate to whether or not this is
18 appropriately a four-month AFC capable of being
19 certified by you today, or whether it is more
20 appropriately a 12-month AFC, in which case the
21 review period for the Revised PMPD would mean we
22 would go out to October 31st to assure that full
23 review period.

24 In any event, parties are here to
25 present their sides of this matter, and if you

1 have any questions later --

2 ACTING CHAIRMAN MOORE:: Mr. Shean, the
3 Committee must have been working with a definition
4 of simple cycle as contained, or as referenced in
5 the four-month order. How did you define simple
6 cycle for the Committee, or in what use was it by
7 the Committee during the deliberations?

8 HEARING OFFICER SHEAN: Okay. I'd like
9 to state at the front that essentially, the
10 responsibility of the Hearing Officer under these
11 circumstances is to be relatively legally
12 conservative, to make sure that the outcome that
13 is presented to you is as legally bulletproof as
14 it can be.

15 We had, the Committee had before it the
16 proceeding which, at the June -- I believe it's
17 the June 6th acceptance hearing, was characterized
18 as capable of being considered as a four-month
19 proceeding, since the power generation portion of
20 the cogeneration project was a -- a simple
21 combustion turbine, which in our parlance is a
22 simple cycle.

23 The project had always been filed as a
24 cogeneration project, and so that there was a
25 prima facie between the filing and the provisions

1 of the statute difference between what had been
2 filed and what the statute covered. On that
3 basis, I recommended to the Committee that we run
4 a parallel path, which gave us a legal safety net
5 so that if for some reason it was determined
6 either that this was not eligible for coverage
7 under 25552, or if an essential finding was not
8 made, or if a waiver of an essential finding was
9 not made, that there was a reversion back to a
10 safe process, and for that reason we conducted a
11 30-day review of the Presiding Member's Proposed
12 Decision.

13 However, upon completion of that review
14 and upon issuance of the FDOC, in an attempt to
15 have this potentially ready for consideration here
16 as a four-month, the Committee went ahead with a
17 workshop and hearing last Monday, which would not
18 have occurred within the timeframes applicable to
19 a 12-month project. CURE has objected to that,
20 and I will just tell you that the 15-day comment
21 period period on a Revised Presiding Member's
22 Proposed Decision has not yet run. But it will
23 have run if the matter is put over to the 31st.

24 ACTING CHAIRMAN MOORE: So in your
25 opinion, the safe path, were this project to be

1 approved or the Presiding Member's Proposed
2 Decision to be adopted, the safe path would take
3 this decision out not through the full 12 months,
4 but through the 31st of October, to allow adequate
5 time under the longer provisions for public
6 review.

7 HEARING OFFICER SHEAN: Yes, and I guess
8 safe -- safer, it -- this is a balancing act. It
9 is essentially a question between taking action
10 today with it as a four-month, knowing that either
11 you have to determine that the simple cycle and
12 cogen are one and the same, and that the waivers
13 are supported sufficiently, or delaying the matter
14 for two weeks, which will still be within the
15 fourth month. We will not have gotten into the
16 running of the fifth month.

17 COMMISSIONER LAURIE: Mr. Chairman.

18 ACTING CHAIRMAN MOORE: Commissioner
19 Laurie.

20 COMMISSIONER LAURIE: I have a little
21 problem with the term "safe". I'm -- I'm not
22 going to base my decision on whether or not a
23 legal opinion is safe. I can accept a statement
24 that a legal opinion may be conservative, but to
25 me it's not -- it's not going to be a question of

1 risk versus safety. It's going to be a question
2 of what the law says.

3 ACTING CHAIRMAN MOORE: Well, I -- I
4 think that's appropriate in this context, and
5 certainly part of our decision is going to be
6 based on whether or not we want to take a
7 conservative view of the definition of the project
8 as to whether it's truly simple cycle, or whether
9 it in fact involves something a little more
10 complex. And on that, I guess the word
11 conservative is probably --

12 COMMISSIONER LAURIE: There's another
13 issue, other than simple cycle. There's an --
14 there's an air quality issue.

15 ACTING CHAIRMAN MOORE: Absolutely. And
16 we don't have the air quality answer, do we,
17 for --

18 COMMISSIONER LAURIE: It doesn't meet
19 one of the necessary findings. Will you address
20 that question?

21 HEARING OFFICER SHEAN: Oh, all right.
22 Now I understand.

23 It's under provisions of Public
24 Resources Code Section 2552, there are essentially
25 seven essential findings, and Staff has addressed

1 this in its brief. Probably the principal one is
2 that the facility not be a major source, as we
3 know major sources to be defined in the air
4 quality regime.

5 This particular facility is part of the
6 refinery, which is considered to be a major
7 source. And in the both Preliminary and Final
8 Determinations of Compliance, my -- my belief is
9 that the district has indicated that for their
10 purposes, they are viewing this as a major source.

11 COMMISSIONER PERNELL: The district, in
12 this case, is the air --

13 HEARING OFFICER SHEAN: This is the Bay
14 Area Air Quality Management District.

15 ACTING CHAIRMAN MOORE: All right. Let
16 me turn, then, and ask Staff for -- for comments.
17 I'll turn to the Applicant, and then I'm going to
18 turn to the Intervenors for some response on these
19 issues.

20 Staff.

21 MR. KRAMER: Thank you. We -- we
22 continue to believe that the project qualifies for
23 the four-month process. It is a simple cycle, it
24 is almost immediately converting to cogeneration.
25 But that's what the -- the statute, Public

1 Resources Code 25552 requires. In effect, it's
2 encouraging that resolve. And we're getting here
3 in a couple hours, maybe, as opposed to three
4 years, which is the time that's allowed under the
5 statute.

6 In light of the Governor's Executive
7 Orders, which allow the Commission to adjust, to
8 suspend some of the restrictions of that section,
9 we think it's perfectly appropriate to make an
10 expansive interpretation of it, and find that this
11 is a simple cycle project that is immediately
12 converting to cogen, but that certainly falls
13 within the -- the spirit, if you will, of that
14 requirement.

15 COMMISSIONER PERNELL: A question on
16 that point.

17 ACTING CHAIRMAN MOORE: Let me let Staff
18 finish, and then -- oh, go ahead. Commissioner
19 Pernell.

20 COMMISSIONER PERNELL: Just -- just on
21 that point, so I can be clear on this. What I'm
22 hearing you say is if I want to build a
23 cogeneration plant, and I wanted to expedite that
24 process, I can say it's simple cycle and then wait
25 three hours and turn it into a cogen?

1 MR. KRAMER: Well, you'd have to say it
2 -- in this particular case they said so on their
3 application. It would take you, if you came in
4 with a simple cycle, got that approved, and then
5 tried to come back with an amendment to convert it
6 to cogen, that's going to take you a lot longer
7 than three hours. But --

8 COMMISSIONER PERNELL: So then I don't
9 understand what happened here.

10 MR. KRAMER: Well, here, it was -- Staff
11 went with the -- I guess you can call it a liberal
12 interpretation, I don't know if that's -- that's a
13 good word around here, but -- and decided that it
14 was -- it met the -- it was within the -- what the
15 statute required. So they recommended to the
16 Commission that it be processed that way. It was
17 processed as a four-month project, so there -- I'm
18 not going to go over all the details in our brief,
19 but this four-month statute exists because you
20 can't do a 12-month project in four months. If --
21 if you could, you wouldn't need the statute.

22 So it's been processed that way all the
23 way to the end, and it was only in the -- the
24 first draft of the PMPD that we learned that there
25 was some question about that. And that has since

1 been argued, you have the briefs from the various
2 parties, including two briefs from us on that
3 point.

4 And I think it's important to go on to
5 the rest of the story, which is the importance
6 of --

7 COMMISSIONER PERNELL: Please continue.
8 That's --

9 MR. KRAMER: -- that this project get
10 going right away.

11 COMMISSIONER ROSENFELD: Well, could --
12 could I just get a matter of fact, which maybe
13 Pernell and I are both confused on. Let me just
14 see if the following definition is correct.

15 A simple cycle plant produces
16 electricity from a gas turbine. A combined cycle
17 plant, which you're arguing this is not, then has
18 a heat recovery steam boiler and produces more
19 electricity downstream. This is a cogen plant.
20 It does not produce a second set of electricity
21 downstream.

22 MR. KRAMER: Right.

23 COMMISSIONER ROSENFELD: So I guess I'm
24 going to ask you, in the Executive Order, what is
25 the actual wording? I mean, this is -- this is a

1 simple cycle gas turbine, but I'm -- I'm now
2 confused about if there's a cogen thermal plant
3 hung on the end, as opposed to an -- a second
4 electrical plant, what the heck the -- the
5 Executive Order says.

6 MR. KRAMER: Here are the statements
7 being used in the refinery --

8 COMMISSIONER ROSENFELD: Right, no more
9 electricity then generated.

10 MR. KRAMER: Right. And, in fact, it's
11 replacing up to three steam boilers that'll go out
12 of service, because they'll no longer be
13 necessary.

14 COMMISSIONER PERNELL: But that's a air
15 quality benefit, isn't it?

16 MR. KRAMER: Certainly it's part of the
17 offset package. And it nets out to zero, I
18 believe, in -- in most of the criteria pollutants.

19 Let's see. The -- the Executive Order
20 refers -- this is Executive Order 26, again,
21 refers to simple cycle thermal power plant. But
22 it's -- that is a phrase that's just summarizing,
23 or trying to put a label on the Public Resources
24 Code section, to explain, I suppose, for the
25 reader which section they're talking about.

1 And then it goes on to say all
2 restrictions in that section shall be suspended to
3 the extent that they will prevent, hinder or delay
4 the prompt mitigation of the effects of the energy
5 emergency that the Governor claimed in an order --
6 earlier proclamation.

7 COMMISSIONER LAURIE: Okay. So if it's
8 a four-month project, you can waive if you -- if
9 you exercise your discretion to do so. But how do
10 you --

11 MR. KRAMER: That might be another
12 approach for the Commission. If you're
13 uncomfortable with broadly interpreting the term
14 simple cycle, you may be able to decide that for
15 -- for reasons I'll go into in a moment, that it's
16 appropriate to suspend, that if you consider that
17 to be a restriction on the type of plant that
18 qualifies, perhaps you can do that.

19 We would prefer to broadly interpret the
20 simple cycle restriction, along with the follow-up
21 requirement that you have to convert to cogen, or
22 combined cycle.

23 ACTING CHAIRMAN MOORE: So in -- in that
24 parlance, a simple cycle machine which had a
25 cogeneration turbine attached to it that was also

1 generating electricity, would still qualify as a
2 -- as a simple cycle operation?

3 COMMISSIONER ROSENFELD: Well, Michal,
4 there is no such thing as a cogeneration --

5 ACTING CHAIRMAN MOORE: Well, in other
6 words, that you've got steam -- you've got steam
7 byproduct turning a second turbine.

8 COMMISSIONER ROSENFELD: But that's not
9 what this is.

10 ACTING CHAIRMAN MOORE: I'm just saying
11 if that was it. I'm trying to understand where
12 the definition stops.

13 MR. KRAMER: I think that's ultimately
14 for you to draw. In our mind, as a practical
15 matter, a big plant, for instance, if you were
16 looking at this as some sort of loophole that
17 somebody's going to drive a thousand megawatt
18 plant through, as a practical matter there's
19 another requirement in here that they be online by
20 the end of the next -- next year, and I don't
21 think they could meet that.

22 So somebody coming to you today with a
23 thousand megawatt combined cycle is not going to
24 be able to have it running by the end of next
25 Christmas, and therefore they -- they wouldn't

1 qualify on that basis.

2 ACTING CHAIRMAN MOORE: All right. Do
3 you want to finish the Staff presentation, then,
4 and we'll turn to Applicant.

5 MR. KRAMER: Why -- why should this
6 project -- why does this project need a quick go-
7 ahead. This is unique from other power plants
8 because this is -- this is going to provide
9 electricity to run a refinery. And refineries,
10 the evidence tells us, really cannot be shut down
11 and turned on within minutes. If there was an
12 unexpected disruption in the power supply to this
13 refinery, then it may be shut down for a week or
14 more, which could result in disruptions to the
15 gasoline supplies in this area, northern
16 California. Aviation fuels could be tied. Planes
17 might have to sit at the airports in the Bay Area
18 because they don't have enough fuel to get out.

19 It's -- it's more serious than, say, a
20 restaurant shutting down for an hour or so, or 15
21 minutes. And what the refinery is proposing to do
22 with this project is make themselves self-
23 sufficient so that they can survive disruptions in
24 the grid, and, as another benefit, they are
25 releasing the power that they would otherwise

1 take, so there's more power available for other
2 users, as well.

3 We see that as a tremendous benefit. It
4 makes this project in some ways more important
5 than your typical power plant which is simply
6 going to be selling power to the grid. And we
7 believe that justifies making the -- taking the
8 actions under the Executive Order to suspend two
9 requirements. One of them relates to the major
10 source issue. This is not a major source by
11 itself, but it is a part of a refinery which is.
12 So it's a modification. It's not even a major
13 modification, it's a minor modification, in the
14 air quality parlance, to a major source.

15 And then secondly, this is in two
16 phases, as was mentioned, and Valero does not yet
17 have the financing for the second phase.
18 Therefore, they have not formally contracted for
19 the construction of the second phase. It's hard
20 to do when you don't have the money. Therefore,
21 we proposed findings for the Commission to waive
22 that requirement that they have a contract in hand
23 when they're approved for construction, as to the
24 second phase only.

25 COMMISSIONER LAURIE: You're asking that

1 that be waived?

2 MR. KRAMER: Yes.

3 COMMISSIONER LAURIE: Why -- why aren't
4 you asking that the project be conditioned?

5 MR. KRAMER: I'm sorry?

6 COMMISSIONER LAURIE: Why aren't you
7 asking that the second phase be conditioned upon
8 such a project, rather than waiving it?

9 MR. KRAMER: Well, it is also
10 conditioned. It has to be built by the end of
11 next year, or the -- the certificate evaporates.

12 COMMISSIONER LAURIE: Is there a
13 condition on the project requiring that the --
14 that the second phase be subject to a contract?

15 MR. KRAMER: No, there is not a formal
16 condition. We could add one.

17 COMMISSIONER LAURIE: Doesn't that go to
18 meet the requirement of the statute?

19 MR. KRAMER: The requirement is that at
20 the time you approve it, that it's there. And --

21 COMMISSIONER LAURIE: Okay. Well, at
22 the -- if at the time you approve it you condition
23 the project upon that being the occurrence, isn't
24 that better?

25 MR. KRAMER: It won't hurt. Ultimately,

1 the, you know, the standard is get it built by the
2 end of next year or you can't run it.

3 COMMISSIONER LAURIE: The standard is
4 meeting the law.

5 MR. KRAMER: Unless it's waived.

6 COMMISSIONER LAURIE: That's my
7 standard.

8 ACTING CHAIRMAN MOORE: Commissioner
9 Laurie, I think you're starting to get out into
10 the stuff that we're going to discuss in the next
11 item.

12 COMMISSIONER LAURIE: Okay.

13 ACTING CHAIRMAN MOORE: And so let me
14 ask you to hold onto that for just --

15 COMMISSIONER LAURIE: Well --

16 ACTING CHAIRMAN MOORE: -- just a
17 second. And let me -- let me just get the rest of
18 the facts on the table, and then -- and then I
19 think you're --

20 COMMISSIONER LAURIE: Okay. They're
21 getting -- getting convoluted.

22 ACTING CHAIRMAN MOORE: Well, we're
23 going to have a policy discussion, I think, that
24 will encompass this, as well.

25 What's the status of the air quality

1 permit right now?

2 MR. KRAMER: We have a FDOC. EPA
3 initially submitted some comments and objections
4 to the Preliminary Determination of Compliance.
5 We received a letter from EPA today that's been
6 docketed, saying they are now satisfied with the
7 FDOC. And the conditions from the FDOC have been
8 incorporated into the Presiding Member's Proposed
9 Decision.

10 ACTING CHAIRMAN MOORE: And are they --
11 are the kind of conditions that Commissioner
12 Laurie was talking about included in the
13 conditions, the proposed conditions of approval?
14 Whether they were added to or not, there are a set
15 of conditions that have been added as a part and
16 parcel of the Proposed Presiding Member's
17 Decision.

18 MR. KRAMER: Conditions regarding the
19 contract?

20 ACTING CHAIRMAN MOORE: Conditions
21 regarding the implementation of this project
22 across the board.

23 MR. KRAMER: We proposed in our brief
24 seven special findings, and in addition we've
25 proposed two conditions. One was that they

1 convert, which we recognized is going to be
2 immediately taken care of. And second, that they
3 build, they construct it and get it online by the
4 end of next year, or else they don't have a
5 certification.

6 ACTING CHAIRMAN MOORE: And there were
7 no -- there were no other mitigations for air
8 quality --

9 MR. KRAMER: Oh, there are --

10 ACTING CHAIRMAN MOORE: -- conditions?

11 MR. KRAMER: -- quite a few, yes.

12 ACTING CHAIRMAN MOORE: So those are all
13 conditions, as well.

14 MR. KRAMER: Yes. All the conditions
15 from the Air District's Final Determination of
16 Compliance, those have been incorporated.

17 ACTING CHAIRMAN MOORE: Right. So
18 they're not just --

19 MR. KRAMER: Mr. Shean's the best source
20 for that.

21 ACTING CHAIRMAN MOORE: There are not
22 just two conditions. There are several conditions
23 that -- that mitigate what was found --

24 MR. KRAMER: More than 50. Yes.

25 ACTING CHAIRMAN MOORE: -- or what was

1 determined to be a problem in the hearings.

2 MR. KRAMER: More than 50.

3 ACTING CHAIRMAN MOORE: Let me turn to
4 the Applicant for comments. And then I'm going to
5 turn to the Intervenors, and then we'll come back
6 up here.

7 MS. NARDI: Thank you. My name is Karen
8 Nardi. I'm counsel for Valero, with the firm of
9 McCutchen, Doyle, Brown and Emersen. And Sam
10 Hammonds, the Environmental Engineer who is the
11 project lead at Valero is here with me, to my
12 left.

13 I'd like to do two things. I would like
14 to accept your invitation to talk about the law,
15 and I hope that I might be able to dispel some of
16 the confusion. But before I do that, let me ask
17 Mr. Hammonds to just say a few words about the
18 project in general.

19 MR. HAMMONDS: I'll make this very
20 brief. I'd like to thank both the Commission and
21 the Commission Staff for promptly looking at a
22 project that's very important to us in the
23 refining business.

24 As Mr. Kramer pointed out, the first
25 phase of our project is directed at getting

1 reliable power to our refinery so that we do not
2 disrupt the supply of gasoline, jet fuel in
3 military jet in northern California. We produce
4 about 25 percent of the gasoline in northern
5 California. We have great concern about power
6 stability, and we see this project as providing us
7 reliable power. It also puts another 51 megawatts
8 back onto the grid for use elsewhere in
9 California.

10 When we do this on Phase 1, we shut down
11 two old boilers. They are inefficient, and we
12 will have a net reduction in air emissions
13 associated with this.

14 Phase 2 would install the second 51
15 megawatts. As mentioned, the financing has not
16 been finalized for that. This would supply
17 another 51 megawatts back onto the grid for
18 northern California. It would shut down another
19 boiler, and still a net decrease in air emissions
20 from the refinery.

21 There are a couple of other topics that
22 are worth touching on very briefly. It was
23 mentioned natural gas is the backup fuel. We will
24 be able to fire refinery fuel gas. We will need
25 to fire refinery fuel gas for this project.

1 However, we are still going to meet the same
2 essential limitations as natural gas. As
3 mentioned, we're cutting edge technology in doing
4 this. But we are committed to doing it. This
5 also reduces reliance on natural gas in
6 California, another important topic.

7 We have also committed to fully offset
8 the water consumption of this project within two
9 and a half years of start-up. We are also
10 building this in the middle of an existing
11 refinery. We have very minimal potential
12 community impacts because of that.

13 Overall, we think this is an extremely
14 good project. We've been in touch with our CPM.
15 She's ready to give us the go-ahead to start
16 construction as soon as we have an approved
17 project at this level. We are very eager to get
18 started before the rains come, because that will
19 be a critical path for getting this machine
20 online.

21 So we are very hopeful that you will
22 give us some positive consideration in this
23 matter.

24 ACTING CHAIRMAN MOORE: Thank you.
25 Counselor, do you want to comment on the Executive

1 Order, or do you want to comment on the law that
2 -- the Warren-Alquist Act?

3 MS. NARDI: I'd like to go right back to
4 the statute, because I think it'll help clarify it
5 for everyone.

6 We think that this is very properly a
7 four-month project and meets all the criteria that
8 are in -- that the legislature put into the
9 statute, with two exceptions. And we agree with
10 the analysis that Mr. Kramer has -- has outlined
11 in the Staff reports.

12 Let me just walk you back very briefly
13 through it, because I don't want anyone to be
14 confused about this.

15 There's seven conditions that have to be
16 met if you are a project that qualifies for four
17 months, and let me start out with what it means to
18 be a project which could qualify if you meet all
19 seven conditions for the four-month expedited
20 review.

21 You have to be a simple cycle that
22 converts within three years to either cogen or to
23 combined cycle. And as Mr. Rosenfeld very
24 properly pointed out, this is not a combined cycle
25 plant. What it is is two jet engines on the

1 ground which are themselves simple cycle, but
2 which will immediately or within a number of
3 hours, three to four hours, become a cogen. So we
4 won't have to wait the three years that the
5 legislature gave as the outside number from, you
6 know, by which a simple cycle has to convert to a
7 cogen. This project, you know, essentially at its
8 inception is a cogen. So it's very consistent
9 with what the legislature was trying to do, in my
10 view, which is to -- I think -- encourage
11 efficient forms of energy.

12 So that's the what is it question. Then
13 you get to the seven conditions which have to be
14 met if you qualify from the threshold. And the
15 first is that you should not be a major source.
16 And we are not a major source. We do -- we are
17 not a major source of pollution, this particular
18 project.

19 In addition, the legislature said you're
20 not supposed to be a modification to a major
21 source, and that's a hang-up because in the
22 complex Clean Air Act law, a whole refinery is
23 viewed as a major source. And it's quite fair to
24 say we're modifying the refinery. So Mr. Kramer
25 has prepared findings which said the Energy

1 Commission can, in its discretion, suspend that
2 requirement.

3 The second requirement is you can't have
4 a significant adverse effect on the environment,
5 and the Staff has worked diligently with Valero to
6 make sure, through a series of workshops,
7 conditions, assessments, that we don't. And I
8 think the City of Benicia is in agreement with us
9 on that point.

10 Third requirement, you have to have a
11 contract with a general contractor to construct,
12 operate, and maintain the equipment. And this
13 goes to Mr. Laurie's point. As we've explained,
14 we do have a contract, and we've provided excerpts
15 of a copy of it, for Phase 1. That's the 51
16 megawatts that will take this refinery off the
17 grid and allow the refinery to operate if there's
18 some sort of a power shortage for whatever reason.
19 But Valero has not yet made a financial commitment
20 or decided whether it's going to proceed with
21 Phase 2, so obviously we don't have a contract to
22 construct Phase 2.

23 We have no objections to what Mr. Laurie
24 suggested. It makes a lot of sense to me to add a
25 condition. In addition to suspending the finding,

1 we can certainly add a condition that says Valero,
2 as an Applicant, will have that contract in hand
3 if we go forward with Phase 2.

4 Fourth, we have to assure protection of
5 public health and safety. That's amply
6 demonstrated through the conditions. We have to
7 show compliance with all of the laws and
8 regulations. We believe that's been satisfied.
9 We have to be online by December 31st, 2002.
10 That's our working deadline. We understand we
11 have to meet that deadline.

12 And, finally, we have to provide
13 offsets, and the project is fully offset.

14 So in our mind, we don't have any
15 confusion about this. I think the Staff has
16 reasoned it through carefully. And I also don't
17 think it will do any violence to your project, as
18 I -- your other projects, as I understand them,
19 because this -- this is exactly the kind of
20 project that the legislature was trying to
21 encourage, and I think offer expedited review for.

22 ACTING CHAIRMAN MOORE: And what's your
23 reaction to the possibility of extending to the
24 31st in order to allow a cushion period that would
25 allow perhaps additional public review?

1 MS. NARDI: Inhospitable. And I'll let
2 Mr. Hammonds explain why. We've extended and
3 extended. We originally had a target date of I
4 think September 15th for the project, and we've
5 extended several times at the request of
6 Intervenor, and so they're working very much
7 against a deadline. So there's the timing
8 factors.

9 But in addition, to the extent that
10 there are critics of the process, I don't think
11 they're going to be satisfied by an October 31st
12 extension, because their view is if it's a 12-
13 month process, you miss deadlines that happened in
14 June and July that none of us can go back and
15 correct.

16 ACTING CHAIRMAN MOORE: Well, let me see
17 if I understand the word "inhospitable", counsel.
18 Impossible, or just uncomfortable and -- and
19 irritable?

20 MS. NARDI: The latter. It is not
21 impossible. It's just -- from a business
22 perspective, it's difficult because we've been
23 trying to get this construction started before the
24 rain. It is not impossible.

25 ACTING CHAIRMAN MOORE: Well, I

1 understand getting stuff done before the rains
2 very much.

3 Thank you. Let me turn to the
4 Intervenors and ask for their comments, and then
5 I'm going to bring this back up here. Is there
6 anyone representing the Intervenors who can come
7 before us?

8 Thank you. Good evening, and welcome.
9 Please give us your name for the record.

10 MS. HAMMER: Thank you. I'm Kitty
11 Hammer, and I'm here representing the City of
12 Benicia this evening.

13 The city, except for the preempting
14 jurisdiction of the Energy Commission, the city
15 would require a conditional land use permit for
16 this project. And so they have participated from
17 the beginning of the process to try to make sure
18 that the city's concerns were accounted for, and
19 -- and the potential conditions that would've been
20 imposed would be met.

21 Initially, the city had concerns
22 regarding air quality, land use, noise, traffic,
23 and water supply. We have successfully resolved
24 all of the city's concerns through the process,
25 and we are satisfied with the Presiding Member's

1 Proposed Decision as it's before you tonight.

2 ACTING CHAIRMAN MOORE: Has your
3 Planning Commission taken up a conditional permit
4 at this point?

5 MS. HAMMER: No, they haven't. It was
6 impossible to get it before the Planning
7 Commission in a timely manner, because of the
8 four-month process.

9 ACTING CHAIRMAN MOORE: Okay. So when,
10 at what point would they, in fact, take this up,
11 were this to go out tonight, when would they take
12 up --

13 MS. HAMMER: We wouldn't expect them to
14 take it up. We were asked to make a -- a
15 determination of compliance several months ago,
16 and that is the point at which the Planning
17 Commission would have been expected to hear it.
18 But we weren't able to get it to them.

19 ACTING CHAIRMAN MOORE: Okay.
20 Appreciate it. Any questions?

21 COMMISSIONER LAURIE: On the --

22 ACTING CHAIRMAN MOORE: Commissioner
23 Laurie.

24 COMMISSIONER LAURIE: Yes. What would
25 it take for the city to issue a interim grading

1 permit that would allow the Applicant to initiate
2 a grading process tomorrow, if they desired to do
3 so, the certification were put off for ten days?

4 MS. HAMMER: The Applicant would need to
5 present the grading plans for review, and I can't
6 speak to exactly how long that would take, but it
7 could be done quite quickly. If -- if it needs to
8 be sent out, the city has a firm on retainer that
9 can review those in a matter of days, I believe.

10 ACTING CHAIRMAN MOORE: Okay.

11 COMMISSIONER LAURIE: Well, let me ask
12 Staff. Has Staff reviewed the grading plan and --
13 and if you had certification today, could they go
14 out and grade tomorrow?

15 MR. CASWELL: The Compliance Project
16 Manager is not here, and those type of documents
17 for compliance prior to -- after certification,
18 but prior to construction, are handled through our
19 Compliance Section with that Compliance Project
20 Manager. And I -- I couldn't tell you what has
21 gone on with that.

22 COMMISSIONER LAURIE: Okay. Well, I --
23 because I'm trying to determine the harm, and if
24 it would take some days for the city to issue a
25 grading permit, I need to know what it would take

1 for the Energy Commission, whether they could go
2 out with our certification and start grading at
3 0600 tomorrow morning.

4 MR. CASWELL: Well, I'd have to speak
5 with the Compliance Project Manager and make sure
6 that they've met all that criteria as of today.
7 It's my understanding -- Sam may be able to
8 elaborate on his -- his providing of that
9 information to the Compliance Project Manager.

10 MR. HAMMONDS: Yes. We spoke with Jeri
11 Scott, our CPM, and she advised us that she had
12 seen, reviewed, had all submittals necessary, and
13 upon approval by the Commission she was ready to
14 issue the letter that would allow us to begin
15 construction and grading.

16 I believe also the city, through --
17 since they're acting as CBO, has reviewed and
18 approved those drawings. I believe the ability to
19 do this is more of a legal question than it is a
20 construction capability question.

21 DEPUTY DIRECTOR THERKELSEN: Good
22 evening, Commissioners. Bob Therkelsen, Deputy
23 Director.

24 In terms of the -- first of all, let me
25 state that the Energy Commission is the Chief

1 Building Official for this project. We typically
2 contract with, or I should say delegate that
3 responsibility to the cities and counties when
4 they have the capability and the willingness to do
5 that work. So in terms of making that decision,
6 it's something the Energy Commission would be
7 doing with the city in this case.

8 COMMISSIONER LAURIE: Well, question,
9 Bob. If there's no certification today, and the
10 property owner went out and started grading
11 tomorrow, we don't have any jurisdiction to go out
12 and cite violation of city ordinances.

13 DEPUTY DIRECTOR THERKELSEN: We have a
14 -- part of our law indicates the fact that
15 construction cannot occur on the site until the
16 Energy Commission has approved the project. The
17 project is under our jurisdiction. So any
18 activity on this project would be the
19 responsibility of the Energy Commission. That
20 couldn't be something that's delegated or handled
21 by the city. We still retain responsibility for
22 that. And based on our law --

23 COMMISSIONER LAURIE: Who -- who makes
24 the decision whether or not to pursue violations?

25 DEPUTY DIRECTOR THERKELSEN: The Energy

1 Commission would. In this case the Staff would
2 probably be the one. In fact, we have done that
3 in past cases, where an Applicant has begun
4 permanent construction activities on a site before
5 the Commission has approved a project. The Staff
6 has gone out there and performed investigations,
7 and if appropriate could file a complaint on that.

8 COMMISSIONER LAURIE: Staff acts
9 pursuant to direction of both the Siting Committee
10 and the Commission as a whole, does it not?

11 DEPUTY DIRECTOR THERKELSEN: It -- it
12 also can act as an independent party.

13 COMMISSIONER LAURIE: Could --

14 DEPUTY DIRECTOR THERKELSEN: Yes.

15 COMMISSIONER LAURIE: -- excuse me?

16 DEPUTY DIRECTOR THERKELSEN: It can also
17 act as an independent party.

18 COMMISSIONER LAURIE: Do you mean you
19 can go out and -- and enforce contrary to the
20 direction of the -- of the Commission?

21 DEPUTY DIRECTOR THERKELSEN: No, it
22 would be under -- under the provisions of the
23 Commission's both law and its decisions.

24 COMMISSIONER LAURIE: So we can -- we
25 can say to the Staff we find no violation, and we

1 direct you not to take action, and you could go
2 out and go to court and do whatever you want to do
3 anyway?

4 DEPUTY DIRECTOR THERKELSEN: But Staff
5 -- it's still one open proceeding before the
6 Commission, and so the Staff is still an
7 independent party in that open proceeding.

8 COMMISSIONER LAURIE: Okay. We're
9 getting a little --

10 ACTING CHAIRMAN MOORE: So -- well, I
11 have one follow-up question on that. As far as
12 the grading permit question that was asked, is it
13 possible that they could in fact go out and begin
14 any grading, prior to this Commission granting the
15 certificate?

16 DEPUTY DIRECTOR THERKELSEN: The policy
17 and practice of the Commission in the past has
18 always been that pre-construction activities
19 result in any permanent change in the property are
20 not pursued before there is a decision. We do
21 allow some things, such as moving trailers onsite,
22 pre-construction work, but not permanent
23 construction activities.

24 ACTING CHAIRMAN MOORE: So that -- that
25 goes to Commissioner Laurie's question as to

1 whether you can have earth-moving or not. The
2 answer is you couldn't, unless it was a Commission
3 decision.

4 DEPUTY DIRECTOR THERKELSEN: Right.

5 ACTING CHAIRMAN MOORE: All right.

6 Thank you, Mr. Therkelsen. Anyone else in -- in
7 active intervention who would like to address us?

8 Good evening.

9 MS. DEAN: Good evening. Thank you for
10 giving me this chance to speak.

11 My name is Dana Dean, I am with the Good
12 Neighbor Steering Committee. We are, just by way
13 of introduction, we're a group of local citizens
14 of Benicia who have concerns, primarily
15 environmental concerns regarding the refinery.

16 We do have, as was mentioned earlier, we
17 have an ongoing relationship with the refinery, in
18 terms of the Good Neighbor Agreement, which we
19 worked with the city and Valero to produce, when
20 Valero bought the refinery some -- some time ago,
21 about a year ago. So I guess you could say we've
22 been a thorn in their side for a little while now,
23 and we've gotten kind of comfortable there.

24 But tonight, I'm here to tell you that
25 as a participant in this process, we -- we want to

1 make it clear that we fundamentally support the
2 project. We think it's good for California, it's
3 good for Valero, and absent any substantial
4 impacts to the community, we -- we have no
5 objection to it.

6 Just to give you a sense of our
7 perspective, we intervened on this action
8 essentially so that we would have direct and ready
9 access to all the information, including all the
10 technical information, and so that we would be
11 able to give a voice to our concerns. I feel that
12 that's -- that we've -- we've had a good
13 opportunity, but I do think that it's important at
14 this moment, given that the four-month process is
15 so controversial, that I give you the practical
16 perspective on the problems for us and for the
17 general public, since I'm really here representing
18 the public of Benicia.

19 First off, when we got -- when we
20 decided to intervene, it was clear to us that the
21 project was moving at a pace that we had
22 absolutely no hope, as regular citizens with jobs,
23 family, et cetera, of taking an in depth look at
24 all of the varying impacts. So rather -- and
25 because fundamentally we think the project is a

1 good idea, and because we understand the energy
2 crisis, the problems that the California community
3 is in as a whole, we thought it appropriate to
4 just set aside anything of a temporary nature, and
5 not concern ourselves with it. To just compromise
6 that out of our concerns. And so we looked only
7 at what we perceive to be permanent or long-term
8 problems. And those would be in the areas of
9 water use and air quality.

10 Even so, it was a massive undertaking
11 for us. And we put a fair amount of time into it,
12 and a number of people were involved.
13 Unfortunately for the general public, they didn't
14 have that level of commitment or that level of
15 understanding, or that level of opportunity. And
16 although it's true some workshops occurred, it's
17 actually also true that only one occurred in the
18 evening, which would be, in my mind, the most
19 appropriate time for the public to participate.

20 And to the extent that people know me in
21 the community as a person involved in air quality
22 issues, I've gotten comments from a number of
23 people that they were not aware of what was
24 happening, that they had concerns but were not
25 able to -- did not feel they had an opportunity to

1 have them addressed. An occasional housewife came
2 to the workshops, but frankly, Benicia is a
3 working-class town and if you have a workshop at
4 10:00 o'clock in the morning on a Monday, no one's
5 going to be able to come.

6 So given all that, I once again just
7 briefly want to say that if you approve the
8 certification tonight, or in a couple of weeks, I
9 hope you do it with the clear understanding that
10 there were some compromises in terms of public
11 access and participation. I, again, I don't know
12 the legal terms, I'll leave that -- whether the
13 process really met the legal requirements or not,
14 I'll leave that to the lawyers to decide. But I
15 can tell you practically, it was flawed.

16 And I hope that if you -- if you find
17 that it's necessary to set the precedent of doing
18 this on a regular basis, that you look to some
19 solution for those kind of problems.

20 Thank you.

21 ACTING CHAIRMAN MOORE: Thank you very
22 much. Appreciate your comments, and your
23 involvement.

24 Commissioner Pernell.

25 COMMISSIONER PERNELL: Yes, just one

1 question. First of all, thank you for
2 participating in the process. One of the
3 solutions would be to have evening meetings,
4 workshops. Does that -- that would be one of your
5 recommendations?

6 MS. DEAN: Absolutely. Well, I think it
7 -- maybe Staff needs to look at the community that
8 they're involved with. I mean, it's -- yeah, it's
9 the 21st Century, so I think most people are
10 working during the day. Most people have two
11 income families, daycare, et cetera, et cetera.

12 COMMISSIONER PERNELL: Most people have
13 to work.

14 MS. DEAN: Yeah. But, so practically
15 speaking, I think the -- the evening meetings --
16 and actually, the evening -- if you look at the
17 meetings that we had, the evening meeting was
18 quite well attended. Of course, Valero staff was
19 a big chunk of the people in the audience, but I
20 would say there were at least a dozen, maybe 20
21 citizens, and all of the meetings that occurred
22 during the day -- well, the evidentiary hearing
23 had maybe five citizens there, and press. And the
24 other workshops and the second hearing related to
25 air quality had me, so.

1 COMMISSIONER PERNELL: But the majority
2 of the community could meet in the evening, and
3 that's where you got the majority of the audience?

4 MS. DEAN: I think that's -- I think
5 that's a -- yeah, that's one practical solution.
6 A second suggestion I would make is -- and I
7 should back up and say that I am unbelievably
8 impressed with every Staff member, every
9 regulatory agency. I take great comfort in the
10 overlap of -- of regulatory oversight in terms of
11 Bay Area Air Quality Management District, the EPA
12 taking a look at things. I actually felt good
13 that -- when I first looked at some of these
14 documents, the things that sort of triggered a
15 little, you know, what is that, in my head, were
16 also ultimately what was looked at by all these
17 regulators.

18 So I do feel good about that, and that's
19 why I can stand here and say that we generally
20 support the project.

21 But a second thing I would consider is
22 some kind of technical assistance for the public,
23 some -- you know, there's a -- there's a gap
24 there. I don't -- I have actually no real
25 suggestion for what to do about it, beyond an

1 acronym dictionary and a few other things like
2 that. But --

3 COMMISSIONER PERNELL: Thank you.

4 MS. DEAN: Okay. Thank you.

5 ACTING CHAIRMAN MOORE: Thank you very
6 much.

7 From CURE. And in your comments, could
8 you address the point that Mr. Shean made earlier
9 on, about the additional time and whether or not
10 in fact it would satisfy what you have been asking
11 for, and perhaps address counsel's point about
12 whether or not that takes us to the end, in terms
13 of comfort.

14 MR. WOLFE: Yes. Good evening. My name
15 is Mark Wolfe, here for CURE.

16 This process quite evidently is fraught
17 with -- with much procedural confusion. And I'm
18 going to turn to that in a second, but before I
19 do, I did want to set the stage with some
20 substantive issues which I think you should hear.

21 On the issue of air quality, as was
22 presented to you, this is the first project,
23 certainly that I'm aware of, since deregulation,
24 that is -- is proposing to burn refinery fuel gas
25 instead of natural gas. It is also a modification

1 to a major source of pollution. So I think the
2 question whether or not it satisfies the 25552
3 criteria is a substantive question, and not just a
4 question of whether this is an extraneous
5 procedural hoop to be jumped through.

6 As the proceeding progressed after the
7 AFC was accepted, I believe, in the first week of
8 June, we submitted a bunch of data requests on air
9 quality that tried to get at what made a facility
10 burning this type of fuel different from other
11 similar facilities burning natural gas. Data
12 responses were proffered timely, I will add, and
13 we thank Valero for that.

14 But it really was not until I believe
15 September 20th, basically into the middle of the
16 third month of the four-month process, that the
17 air district issued its PDOC. And as you've
18 heard, that PDOC was itself fraught, we thought,
19 with problems and lack of clarity, again both
20 substantive and procedural. We submitted
21 voluminous comments, and I'm pleased to say that
22 USEPA Region 9 joined the vast majority of those
23 comments and raised many of the very same issues
24 we did.

25 As a result, we understand that there

1 was a series of discussions taking place between
2 Staff and EPA and the district to resolve some of
3 EPA's questions -- or concerns, as a result of
4 which there were substantial, and I -- I must
5 underscore that, substantial changes to the air
6 permit. Emissions limitations for several
7 pollutants were added or substantially modified.
8 The Applicant's offset proposal, which involved
9 essentially an SO2 bubble to curtail existing
10 sources at the refinery was substantially
11 clarified.

12 That FDOC came out, I believe Friday,
13 October 5th, one day, I think, before the formal
14 deadline for the four-month process was supposed
15 to lapse. It then had extra appendices and
16 attachments sent out the following Monday, on the
17 8th. The PMPD came out on the 9th, the very next
18 day, after the FDOC was released, and it wasn't
19 until two days ago, Monday the 15th, that there
20 was actually a hearing conducted to accept the
21 FDOC into the record. And needless to say,
22 there's been no time since then for us to have any
23 comments on the FDOC considered.

24 And I would -- I did want to point out
25 one last substantive issue on this topic, which is

1 Staff correctly stated that EPA sent a letter, I
2 believe yesterday, stating that it concurred with
3 the conclusion that the project did not need a PSD
4 permit, which is one of the major air issues. But
5 on the same day, it also sent a letter to the air
6 district stating, in essence -- and I have the
7 letter here, and I'd be happy to show it to
8 anybody -- that not all of EPA's issues were
9 resolved.

10 ACTING CHAIRMAN MOORE: That letter is
11 in dockets?

12 MR. KRAMER: I don't know.

13 ACTING CHAIRMAN MOORE: Was it docketed?

14 HEARING OFFICER SHEAN: Correct. Yes.
15 Yes.

16 ACTING CHAIRMAN MOORE: It was. All
17 right.

18 MR. WOLFE: Not all of EPA's issues were
19 resolved in the FDOC. It did go on to say that
20 for PSD purposes, it was fine to go forward. EPA
21 then said that it still had concerns with test
22 methods and compliance determinations for the
23 project, but that it believed they could be
24 addressed when the district issues a Title 5
25 permit for the entire refinery.

1 And that may be true, but I would point
2 out that this Commission obviously needs to make a
3 determination of compliance with federal LORS, and
4 I think this issue needs to be addressed. And we
5 would like to address it in responses to -- to the
6 Revised PMPD.

7 So turning from those substantive issues
8 to the procedural confusion. Let me just say I --
9 I don't think it would be appropriate or lawful,
10 frankly, for the Commission to adopt this project
11 tonight either under 25552 or under the normal 12-
12 month process. If you look at the PMPD before
13 you, there is first of all no mention of the four-
14 month process at all. Look at the adoption order.
15 It says that this was -- these proceedings were
16 conducted in accordance with the 12-month
17 regulations. You don't even see, I think, the --
18 the phrase, 2552 [sic] anywhere there.

19 So there are no findings of compliance
20 with the conditions in the statute. And as you've
21 heard, one of those findings can't be made because
22 it's a major modification. We think that you can
23 also not make the findings of compliance that the
24 Applicant has actually got a contract to construct
25 the project using skilled labor, either for Phase

1 1 or Phase 2, and my colleague, Mr. Joseph, is
2 going to speak to that in a second.

3 So you can't make those findings.
4 There's also no findings in the PMPD before you
5 justifying the suspension on grounds that the
6 suspension is necessary to mitigate the effects of
7 the crisis. Although the Staff did submit a
8 series of proposed findings, those have not been
9 incorporated into the PMPD that's before you
10 tonight, and we have had no opportunity to comment
11 on them as something that's been incorporated into
12 the PMPD.

13 I would also add, again, that the PMPD
14 was issued before the FDOC was accepted into the
15 record, which violates Section 1751 of -- of your
16 regulations that requires that the PMPD be based
17 on all of the evidence in the record. We don't
18 see anything in the Executive Orders issued by the
19 Governor that authorizes the suspension of that
20 requirement.

21 We would observe that there was a
22 Committee conference and a public hearing
23 conducted two days ago, on Monday, that, A, was
24 not noticed ten days in advance, that I personally
25 could not attend; and, B, did not have any

1 Committee Member present. And that is something
2 that's required by Section 25211 of the Warren-
3 Alquist, there has to be at least one Committee
4 Member present there.

5 And finally, and probably most
6 seriously, for all the reasons we've said, because
7 we haven't had an opportunity to comment, the PMPD
8 does not contain any response to comments received
9 on the latest version of the PMPD, which it must,
10 and we view this as a CEQA requirement that can't
11 be waived. And certainly nothing in the Executive
12 Orders authorizes the Commission to waive that.

13 So for those reasons, we don't see that
14 it would be, again, appropriate or lawful to
15 license it under the four-month process tonight.
16 As for the normal 12-month process, I think you've
17 already heard evidentiary hearings were convened
18 less than 90 days after the AFC was accepted. It
19 was accepted June 6th, the first hearing took
20 place August 20th, which was 75 days later. We
21 don't see anything in the Executive Order that
22 authorizes suspension of that.

23 Committee conference was not noticed ten
24 days in advance. There hasn't been a 15-day
25 opportunity to comment on the Revised PMPD, per

1 Section 1753, et cetera, et cetera. The same sets
2 of reasons.

3 So no matter how you slice it, I don't
4 think it's appropriate to approve the project
5 tonight. And I also would observe that in the
6 absence of clear evidence of a dire continuing
7 ongoing electricity crisis, it would set a
8 dangerous precedent, frankly, to -- to license a
9 project in the face of all of these procedural
10 violations, and substantial procedural confusion
11 that I've outlined today.

12 So with that, I do know that my
13 colleague, Mr. Joseph, has a couple of brief
14 comments to make on the labor contract
15 requirement, if you would be willing to entertain
16 those.

17 ACTING CHAIRMAN MOORE: All right. Mr.
18 Joseph, we'll entertain those, and then we're
19 going to bring this back to the Commission for
20 deliberation.

21 MR. WOLFE: Thank you very much.

22 ACTING CHAIRMAN MOORE: Thank you.

23 MR. JOSEPH: Thank you, Commissioners.

24 Marc Joseph, on behalf of CURE.

25 As Mr. Wolfe suggested, I want to

1 address one specific requirement of Section 25552,
2 the four-month requirement, four-month provision
3 that the legislature has authorized for your
4 proceedings.

5 I'm sure each of you has -- has looked
6 at that provision, but I'd like to actually pass
7 out the appropriate section to that, if I may, so
8 that we can all look at it together and look at
9 the exact words, because it is the exact words of
10 the law which are important here. If I may do
11 that.

12 ACTING CHAIRMAN MOORE: The Public
13 Adviser's going to bring them up.

14 All right. You're quoting from Section
15 25552.

16 MR. JOSEPH: That's correct. This is
17 subsection (d) of that provision, which lays out
18 three requirements in order to invoke the four-
19 month process. Initially, it has to be a simple
20 cycle power plant, and you've heard that
21 discussion.

22 And then there are items one, two and
23 three. The first is that it can't be a
24 modification of a major source. The second is it
25 will not have a significant adverse effect on the

1 environment. And the third is the one I want to
2 focus on.

3 The third says, with respect to a
4 project for a thermal power plant and related
5 facilities reviewed under the process established
6 by this section, the Applicant has a contract with
7 a general contractor and has contracted for an
8 adequate supply of skilled labor to construct,
9 operate, and maintain the thermal power plant.

10 The -- the Applicant does not have the
11 second contract. The Applicant has a contract, by
12 its own declaration, with a general contractor,
13 period. If subsection (3) ended with a period
14 after the word "contractor", the applicant would
15 have satisfied that requirement. But the sentence
16 does not end there. The sentence is, and I think
17 the legislature's intent is clear here, and the
18 legislature's intent is something which I'm pretty
19 familiar with here. The legislature set up two
20 requirements in subsection (3), a contract with a
21 general contractor, and has contracted for an
22 adequate supply of skilled labor. The Applicant
23 meets the first; they do not meet the second.

24 Now, the Applicant states in its
25 declaration that its contract with its general

1 contractor is adequate because the general
2 contractor will provide the skilled labor. Well,
3 if that's all that this provision required, you
4 wouldn't need the second half of this phrase.

5 Now, as further evidence for what I
6 think is the absolutely clear intent of the
7 legislature, I'd also like to pass out to you the
8 analogous section of what this provision looked
9 like before it was amended to read like this, so
10 that you can compare the before and after, so that
11 the legislature's intent will be crystal clear.

12 COMMISSIONER LAURIE: Mr. Joseph, what
13 kind of evidence do you think would support a
14 finding of a contract for skilled labor?

15 MR. JOSEPH: One piece of evidence I can
16 think of, and it's obviously our preferred piece
17 of evidence, is evidence of project labor
18 agreement which contains a requirement that
19 skilled labor be provided from union hiring halls.
20 That would satisfy --

21 COMMISSIONER LAURIE: From -- from what?

22 MR. JOSEPH: From union hiring halls.
23 That would satisfy this requirement. That is not
24 the only way to satisfy it, and I'm not suggesting
25 that it is, but that's one method that would

1 satisfy it.

2 ACTING CHAIRMAN MOORE: Well, okay.
3 Enough -- for a commercial on that one. We
4 understand where you're arguing from. You're
5 going to tell us that a contract with a skilled
6 labor provider would also suffice.

7 MR. JOSEPH: Yes.

8 ACTING CHAIRMAN MOORE: Okay. Do you
9 want to go to your new page? And this is the
10 language before that was passed.

11 MR. JOSEPH: That's right. You see at
12 the top, this is dated August 29th. August 31st
13 is the date that AB 970 containing this language
14 was adopted by the legislature. This is two days
15 before.

16 If you look down to --

17 ACTING CHAIRMAN MOORE: It's
18 highlighted.

19 MR. JOSEPH: It's highlighted on yours.
20 You got my copy.

21 COMMISSIONER PERNELL: Well, not on
22 mine.

23 ACTING CHAIRMAN MOORE: The Chairman's
24 copy. Okay.

25 (Inaudible asides.)

1 MR. JOSEPH: Yes. If you'd look at
2 subsection (5), you see that it says, a showing
3 that the Applicant has a contract with a
4 legitimate contractor and can demonstrate the
5 adequate availability of a skilled labor force.
6 That would only require the demonstration of the
7 availability, but that's not what the legislature
8 passed. They passed a requirement that you have
9 contracted for, and there's no evidence of a
10 contract.

11 Now, there has been discussion about
12 whether or not to invoke the Governor's Executive
13 Order D2601, and suspend requirements of this
14 statute. And I do acknowledge that it is within
15 your authority, if you make the findings under
16 that Executive Order, to suspend this requirement.
17 We think that you should not. We think that it's
18 -- the legislature had the policy right, of
19 requiring this. But it is within your authority
20 to suspend this requirement. And I would ask that
21 if you do suspend this requirement, you make clear
22 that the Applicant has not met this requirement,
23 but that you are suspending it, and not pretend
24 that the Applicant has met it.

25 Thank you.

1 ACTING CHAIRMAN MOORE: Thank you, Mr.
2 Joseph.

3 Is there anyone else from Intervenors
4 who -- or the public, who would like to address
5 us?

6 I'll bring it back. Staff, you have a
7 clarification on -- on some item?

8 MR. KRAMER: Yes. As far as the
9 Commission's ability to -- to modify its
10 procedural requirements, that's an element of
11 Executive Order D2801, which applies to any
12 project that would be covered in various Executive
13 Orders, including D26, which is the one that
14 relates to specifically the four-month projects.
15 And it gives the Energy Commission and various
16 other reviewing agencies the authority to modify
17 their procedural requirements, including the
18 timeliness for notices and hearings in the Warren-
19 Alquist Act, and implementing regulations and
20 other statutes for these projects.

21 So if you find that it's subject to the
22 four-month -- or it qualifies for the four-month
23 process, then the procedural -- then you can
24 modify the procedural requirements so that none of
25 the procedural criticisms would be applicable.

1 COMMISSIONER LAURIE: Mr. Chairman.

2 ACTING CHAIRMAN MOORE: I'm not sure
3 that's a procedural item. Commissioner Laurie.

4 COMMISSIONER LAURIE: Do you believe, in
5 order to legally approve this project, we have to
6 make a finding under the -- we have to use the
7 labor provisions under the Executive Order.

8 MR. KRAMER: Staff believes that is the
9 appropriate way to approve it today. I haven't
10 made the calculation that Mr. Shean has, so I
11 can't give you a definitive opinion about whether
12 postponing it for two weeks will cure those
13 defects by itself, and you can say that you're
14 adopting it under the 12-month process.

15 COMMISSIONER LAURIE: Do you believe
16 that this project meets the legal requirements
17 procedurally for -- and has met procedurally for a
18 12-month project?

19 MR. KRAMER: If it were approved today?

20 COMMISSIONER LAURIE: No, no, no. Even
21 if it's -- let's say it's approved on the 31st.
22 Has it met the legal procedural requirements under
23 the 12-month process?

24 MR. KRAMER: To this date, no. Not all
25 of them.

1 COMMISSIONER LAURIE: So --

2 MR. KRAMER: And that's discussed in our
3 brief, which we filed some time ago.

4 COMMISSIONER LAURIE: So is -- are you
5 suggesting that the Commission is in a box, that
6 it is now obligated to approve the project, if at
7 all, under the four-month process -- I'm not
8 talking about approving it today, I'm talking
9 about approving it on the 31st -- you're
10 suggesting that we have not followed the
11 procedural requirements for the 12-month process,
12 therefore we have to use the four-month process.

13 MR. KRAMER: Today, clearly, there --
14 there would be a point in time at which the -- any
15 procedural defects under the 12-month process
16 could be cured.

17 COMMISSIONER LAURIE: But it's not going
18 to be by the 31st.

19 MR. KRAMER: Well, I'm not sure if the
20 31st will work. That's the best I can tell you at
21 this point.

22 ACTING CHAIRMAN MOORE: All right.
23 Commissioner Pernell.

24 COMMISSIONER PERNELL: Mr. Chairman, let
25 me try and take a different tack, and that is what

1 additional conditions, if any, that -- and, of
2 course, this would be something that the Applicant
3 would have to agree to, as well as Staff and --
4 but what additional conditions that can be brought
5 to us that will allow this project to move
6 forward, or is it in such a state that it can't go
7 forward at all?

8 MR. KRAMER: What I hear everyone saying
9 is that this project is a good project, and we're
10 really arguing over procedural issues. Have --
11 have various determinations been --

12 COMMISSIONER PERNELL: Well, there's
13 more than just procedural issues here, I think.

14 MR. KRAMER: Well, if this were a 12-
15 month process, then you wouldn't -- you wouldn't
16 be worrying about whether it was a major source or
17 not. Presumably, you -- you wouldn't have to
18 require that they convert to any -- at any
19 particular time, and it wouldn't -- the simple
20 cycle versus immediate cogen, et cetera, et
21 cetera, that distinction would be meaningless,
22 because you can approve any of those projects
23 under the 12-month process.

24 COMMISSIONER PERNELL: What about 25552?

25 MR. KRAMER: Oh, that has these

1 requirements. We've -- we've described those that
2 we feel can be satisfied, and those that need to
3 be suspended in order to approve this project, and
4 it's simply the modification, the minor
5 modification of a major source, and the contract
6 on the second phase, the second turbine and steam
7 generator.

8 EX OFFICIO MEMBER BOYD: Mr. Chairman.

9 ACTING CHAIRMAN MOORE: Commissioner
10 Boyd.

11 EX OFFICIO MEMBER BOYD: This is a
12 difficult issue, but as one who has virtually
13 every day since the beginning of the energy crisis
14 been involved in this -- the issue of the energy
15 crisis, who served -- serves still on the
16 generation team, and is intimately familiar with
17 the severity of the energy crisis facing the state
18 in January, and how painfully close we came to
19 having no electricity, and how we reached out to
20 the community at large with regard to the issue of
21 building power plants, providing new procedures,
22 encouraging self-generation, looking favorably at
23 the idea of -- of people pulling their power needs
24 off the grid as -- as rapidly as possible, and
25 seeing that when this project came along, that it

1 would have other attributes which, unfortunately,
2 in the last month or so have become even more
3 painfully apparent, I do find a lot of this
4 discussion over procedures being just a discussion
5 over procedures and differences of opinion.

6 I read the whole PMPD, which is not like
7 me, but I know the air quality issue was
8 significant in this, and those of you who know my
9 background know that obviously I'd be concerned
10 about that. And I thought the project moved an
11 incredibly long way in a short period of time.
12 I'm very impressed with -- with the citizens'
13 comments about compromise, about process, both the
14 negative and the positive parts, and the process
15 has worked pretty well here under some pretty
16 severe times.

17 In my mind, if XYZ Corporation proposed
18 this project across the street from the refinery,
19 and somehow or another the refinery agreed to take
20 all the electricity and all of the steam and went
21 with the four-month process, the debate would be
22 moot because it -- it's not a major source in that
23 context. So this thing is getting hooked into a
24 refinery as a -- trying to make it a major source,
25 for whatever reasons.

1 As long as all the environmental
2 conditions are met and they appear to be met, or
3 conditioned, and if the subject of 25552, as -- as
4 Commissioner Laurie brought up earlier, could be
5 handled as a condition, not a waiver, which I
6 would look to counsel to give some advice on, I
7 frankly, knowing all that I do know and knowing
8 the good faith effort of the Staff, and even the
9 proponents of this project, find myself agreeing
10 with the -- one of the citizens who said she was
11 fundamentally in support of the project.

12 I think that's where I find myself at
13 this point in time. This project is part of -- of
14 getting ourselves out of the woods. It's coming
15 late in the process. There's a lot of debate
16 about where we are at the present point in time.
17 There's no debate about replacing old inefficient
18 things with new more efficient things, at least
19 there shouldn't be from an environmental
20 standpoint, and there has to be a consideration,
21 in my mind, about the good faith effort of people
22 on both sides of the equation to -- to respond to
23 what was a declaration of emergency in the state.

24 So I -- I find that pending some advice
25 and counsel from counsel, that were I to vote, I

1 would find myself very favorably disposed towards
2 this project.

3 ACTING CHAIRMAN MOORE: Thank you.

4 Commissioner Keese is on the line with
5 us, and has been through this whole hearing. And
6 I'm going to turn to him and ask if he's got
7 questions of the Staff or Applicant.

8 Commissioner, are you with us?

9 CHAIRMAN KEESE: Yes, I am.

10 ACTING CHAIRMAN MOORE: Do you have
11 questions for Staff that you'd like to get on the
12 table?

13 CHAIRMAN KEESE: No. I think I'm -- I'm
14 following it. I apologize, the -- they didn't
15 have plane -- phone connections on the last plane
16 I was on, and we were 45 minutes late.

17 I do -- I would definitely ask Staff
18 what their opinion of Mr. Joseph's comment is,
19 because I would tend to agree that -- that we are
20 not making a finding on the contractual issue, and
21 did they feel that that was covered in what
22 they're saying, or can we just vote with the
23 understanding that we're not making a finding on
24 the contractual issue?

25 MR. KRAMER: Well, we believe that the

1 evidence supports, as to Phase 1, and, you know,
2 it's a judgment call, but the evidence shows that
3 they have contracted with a contractor who is
4 obligated to provide labor. Unless --

5 CHAIRMAN KEESE: The question that was
6 raised was had we -- have we received evidence
7 that met that statutory requirement. And -- and
8 if I -- as I heard the suggestion, the Governor's
9 Executive Order D2601, which waived the
10 administrative provisions, essentially, does --
11 they seem to acknowledge that that may have been
12 waived. And they ask that we just make a finding
13 on that issue.

14 MR. KRAMER: Well, I'll let Ms. Nardi
15 summarize the evidence, but -- the details of the
16 evidence. We believe that Valero has shown as to
17 Phase 1 that they have a contractor lined up, and
18 there's -- a reasonable presumption can be made
19 that the skilled labor is available and will be
20 found to construct the project.

21 As to the maintenance and operation,
22 Valero has said that their -- their personnel who
23 currently operate similar equipment at the
24 refinery will be operating this project, as well.
25 And I just don't think that there have to be two

1 separate contracts in all cases. In some cases
2 you're going to contract with someone who is then
3 going to subcontract. And it is true that the
4 Commission Staff has not asked for a list of
5 employees, or obtained one, nor have we reviewed
6 the qualification of the individual employees who
7 would work on the project. But I would submit
8 that that's -- that's way in --

9 CHAIRMAN KEESE: And -- and -- the
10 suggestion was it's not necessary for us to take
11 this action and do such.

12 MR. KRAMER: Well, it is -- it is a
13 required finding, so you either need to suspend
14 the requirement, or -- or find that it's met. But
15 let me let Ms. Nardi summarize the evidence on it,
16 since I think this is a key point.

17 MS. NARDI: Yeah. Let me make a quick
18 explanation here, and I apologize for taking so
19 much of your time.

20 It is absolutely not the case that we
21 don't have a contract for labor to construct Phase
22 1 of this power plant. We do, and if you take a
23 look at the supplemental materials that were out
24 on the front desk there, added as backup material,
25 we actually provided a copy of the contract and a

1 declaration submitted by the refinery manager, and
2 I actually wondered whether Mr. Joseph perhaps
3 didn't have a chance to read it.

4 But what it says is that we, Valero,
5 have hired a contractor who's going to diligently,
6 carefully and in a substantial and workmanlike
7 manner perform all work, capital W, and work, in
8 paragraph 3, shall mean all labor, comma,
9 materials, supplies, equipment. We have a
10 contract for labor. We'd be pretty poor business
11 people if we didn't have, you know, a contractor
12 who could supply the labor to do this
13 construction.

14 As to the operation and maintenance,
15 we've explained that we have a very skilled labor
16 force at the refinery, and we're going to use
17 those people on an ongoing basis to operate and
18 maintain this. I think most businesses would.

19 What we don't have is a contract for
20 Phase 2, because we've explained to you from the
21 get-go that, you know, it's an open ended question
22 as to whether we'll build Phase 2. We have no
23 problems in adding the condition that Mr. Laurie
24 perhaps suggested, that we have that in our hands
25 and show it to you before we build Phase 2. That

1 would not be a problem.

2 ACTING CHAIRMAN MOORE: Commissioner
3 Keese, other questions?

4 CHAIRMAN KEESE: No, that's fine.

5 ACTING CHAIRMAN MOORE: All right. I'm
6 going to bring this back.

7 Gentlemen, we have a Proposed Decision
8 before us. We have a suggested modification of
9 that that was offered by Mr. Shean, and I'm going
10 to ask him to come back to the microphone for just
11 a minute and briefly review what he meant by the
12 suggestion that this could be pushed to the 31st,
13 which I understand, and I'm not asking it, but --
14 for your vote on that, but I just want it on the
15 floor. I realize that gives the Applicant some
16 discomfiture.

17 Mr. Shean.

18 HEARING OFFICER SHEAN: The matter of
19 the 31st is that with the release of the Revised
20 Presiding Member's Proposed Decision on, I believe
21 it was October 9th, at 15 days, that takes us out
22 to the 24th of October, and that is the required
23 public comment period on a Revised PMPD. And
24 revised, meaning that there's some significant
25 material difference between the Proposed Decision

1 and the Revised Proposed. And I believe, given
2 the material differences between the Preliminary
3 Determination of Compliance and the Final
4 Determination of Compliance, that that applies.

5 Therefore, the Commission should not, in
6 my conservative legal opinion, take the action
7 prior to the 24th. And if you do take the action
8 after the 24th, and we do it on the 31st, that to
9 absolutely close the loop, make it as conservative
10 and bulletproof as possible, that CURE be asked to
11 offer, for purposes of the Committee's
12 determination, whether they have an issue that
13 they wish to adjudicate during the comment period
14 or prior to a Commission meeting on the 31st, and
15 that that would be put up or shut up time for
16 CURE.

17 And that if there's a matter of
18 substance that relates to air quality, that they
19 would have to come forward with it, and we would
20 conduct a hearing as a Committee.

21 ACTING CHAIRMAN MOORE: Mr. Shean, Mr.
22 Wolfe indicated that there were -- in fact, he
23 identified several items that could be considered
24 deficiencies, or at least matters that had not
25 fully come before the Committee because they came

1 out after publication date, specifically in the
2 air quality area. Are those the kinds of items
3 that you think would be considered in more depth
4 by the Committee, and would allow CURE or other
5 Intervenor's a chance to comment? Is it that kind
6 of evidence that you're talking about?

7 HEARING OFFICER SHEAN: I think it's any
8 substantive evidence that they have that would
9 suggest that the final DOC is in itself
10 inadequate, and that our reliance upon it in the
11 decision is inappropriate, and that there would be
12 a significant environmental effect notwithstanding
13 the conditions in the Final Determination of
14 Compliance. That would be the only opportunity I
15 think they should be afforded.

16 As -- insofar as the question of timing,
17 I think you need to understand with respect to
18 these four-month cases, we cannot wait for Final
19 Determinations of Compliance before Committee
20 documents are put out. You could -- you could
21 effectively argue that the initial Presiding
22 Member's Proposed Decision should not be issued
23 until there is a Final Determination of
24 Compliance. But I tell you, there is absolutely
25 no way in hell that you can then conduct and

1 complete a case in four months.

2 So the -- what we have set up as a
3 practice, and I believe that it does work, is that
4 on the basis of a Preliminary Determination of
5 Compliance, you get the Presiding Member's
6 Proposed Decision. If there are substantial
7 changes that occur to that during the comment
8 period on the -- that's conducted by the district
9 in the Preliminary Determination of Compliance,
10 you anticipate that, you wait until you get it,
11 and then you issue a new Presiding Member's report
12 that has been revised to reflect that. And then
13 you have a comment period on that. And so long as
14 you get that final into the record before you vote
15 as a full Commission, and it has not been changed
16 from the -- the final that was relied upon for the
17 Revised PMPD, I believe that legally you're on --
18 on solid ground.

19 ACTING CHAIRMAN MOORE: Thank you. Are
20 there questions for Mr. Shean?

21 COMMISSIONER LAURIE: Question, Mr.
22 Chairman.

23 ACTING CHAIRMAN MOORE: Commissioner
24 Laurie. Oh, I'm sorry. We're going to --
25 Commissioner Keese.

1 CHAIRMAN KEESE: I'm sorry. I am having
2 difficulty hearing the whole conversation. But
3 the gist of what Mr. Shean recommended is that we
4 postpone, and I -- I had thought that I heard one
5 of our attorneys suggesting earlier that a
6 postponement, that they could not assure that a
7 postponement didn't jeopardize our ability to
8 continue under the four-month process. Is that --

9 ACTING CHAIRMAN MOORE: All right. Let
10 me ask counsel to comment.

11 CHAIRMAN KEESE: Was -- was that not --
12 did not they suggest that they -- they couldn't
13 assure that it was --

14 ACTING CHAIRMAN MOORE: Well, I didn't
15 hear them say that it abridged the ability to
16 continue that way. They just said that we weren't
17 assured.

18 MR. KRAMER: In fact, four months are
19 over. They were over the first week of October.
20 So we're beyond four months --

21 ACTING CHAIRMAN MOORE: Even today.
22 Even as we speak.

23 MR. KRAMER: Yes.

24 CHIEF COUNSEL CHAMBERLAIN: Mr.

25 Chairman, I -- I believe the statement that --

1 that he's referring to was a statement that even
2 if we waited until October 30th, we could not cure
3 all of the alleged procedural defects that one
4 would argue might've occurred if we're going to
5 rely on the 12-month process. And specifically,
6 Section 25521 of the Warren-Alquist Act provides
7 that no earlier than 90 nor later than 240 days
8 after the date of filing of an application, the
9 Commission shall commence a public hearing.

10 As you heard earlier, the Commission
11 commenced a public hearing this -- in this
12 proceeding on the 75th day. So there's no way to
13 cure that, but on the other hand, that is probably
14 a directory provision that would not, in my
15 opinion, make the entire decision of the
16 Commission invalid.

17 ACTING CHAIRMAN MOORE: Understood.

18 HEARING OFFICER SHEAN: If I can chime
19 in on that point, because actually we did have an
20 exchange with Mr. Chamberlain, and with Mr. Brees.
21 And -- and the reality is, is that the statute
22 provides before 90 or after 240. And if you will
23 look at a lot of the 12-month cases that have been
24 conducted by the Commission, you will find that
25 the first evidentiary hearing is not conducted

1 until well after 240. Now, I don't think you'd
2 ever, in your slightest harebrained imagination,
3 suggest that conducting an evidentiary hearing
4 after day 240 was a violation of due process.

5 The real question here is whether or not
6 by conducting, under a four-month proceeding, an
7 evidentiary hearing at day 75, denied any of the
8 parties due process. I think we need to give some
9 comfort to the Applicants, who are -- both have
10 already filed and who are here waiting to file
11 their four-month proceeding, that if for any
12 reason they should fall out of that four-month
13 process, the fact -- we don't have to make some
14 show trial to go back to day 90, that we could
15 continue from --

16 ACTING CHAIRMAN MOORE: Or start the
17 clock all over again.

18 HEARING OFFICER SHEAN: -- where we are,
19 and so long as -- and I believe it's the
20 commitment of our office, as well as the
21 commitment of the office of the General Counsel
22 and the Staff, that all parties shall be afforded
23 due process in -- in this proceeding. Which means
24 adequate notice and an opportunity to be heard.

25 ACTING CHAIRMAN MOORE: Commissioner

1 Laurie.

2 COMMISSIONER LAURIE: The question I was
3 going to ask Mr. Shean was whether or not he felt
4 that the 12-month process -- that the regulations
5 regarding the 12-month process had been complied
6 with. And I believe we have heard his response.

7 ACTING CHAIRMAN MOORE: I believe we
8 have. Thank you.

9 Gentlemen, before -- do we have other
10 questions?

11 COMMISSIONER PERNELL: Mr. Chairman, I
12 -- I have a -- maybe a comment and a question.

13 ACTING CHAIRMAN MOORE: All right.

14 COMMISSIONER PERNELL: And that is, I
15 would agree with Mr. Boyd that given the intent of
16 the Applicant and how they are working with the
17 community, that we should do everything we can to
18 try and move forward. And having said that, it
19 appears to me that a number -- we can add to the
20 conditions and if, in fact, we can do that and
21 satisfy whatever procedural matter we have to, or
22 whatever other opposition that's out there, then
23 we should attempt to do that.

24 And my question is on the conditions,
25 and I -- I'm having some difficulty, having been a

1 legislative advocate, knowing what the intent of
2 legislation is, regardless of how it's written,
3 that if you went to a court of law that the
4 intent, I think, would prevail. So I'm a little
5 bit uncomfortable with -- with a -- a statute that
6 talks about what the intent of the legislation is,
7 and actually it's -- it's pointed out to us in a
8 couple of different documents.

9 So my question is, is there any room for
10 condition in this project to alleviate some of
11 that, as well as the procedure issues that we have
12 before us. And that question is to the Applicant.

13 MS. NARDI: Well, Mr. Pernell, I -- I
14 think that you're raising a good point, which is
15 that, you know, in the ordinary course, agencies
16 don't typically waive what's written into the
17 Public Resources Code or the Health and Safety
18 Code, or any of our codes. But the Governor gave,
19 because of the rare circumstances, in his
20 Executive Order, and Mr. Kramer read it a few
21 minutes ago so I won't repeat it, but he gave the
22 Energy Commission a kind of a unique authority to
23 not wholesale throw these out the window, but to
24 suspend them as necessary.

25 And there's really only a couple of

1 things that need to be suspended here. I -- I
2 find them rather modest, in the scheme of things.
3 We are not a major modification, as Mr. Boyd
4 pointed out, but we are a modification to a
5 refinery, so you need to suspend that finding.

6 We don't have a contract for labor for
7 Phase 2, because we're not sure we're going to
8 build it. And so you would need to suspend that,
9 but you don't need to worry about whether we have
10 a contract for labor for Phase 1 because we do.

11 So I think, based on --

12 COMMISSIONER PERNELL: Well, perhaps we
13 need to worry about whether you have a contract
14 for Phase 2.

15 MS. NARDI: Right. And our -- our
16 penalty would be -- correct. And our penalty
17 would be if we don't have that, and I'm glad to
18 take a condition, I'm sure Valero's, you know,
19 happy to take a condition, we couldn't move
20 forward. We wouldn't -- your certification would
21 not be good. So we'd have kind of the ultimate
22 penalty if we didn't have one.

23 So -- and we're glad to take that
24 condition. But with those -- those findings and
25 suspensions, I see no impediment to you moving

1 this as a four-month project tonight, or, if you
2 wanted to, on October 31st, although we'd prefer
3 this evening.

4 COMMISSIONER PERNELL: Well, Mr.
5 Chairman, if I may, can I request that Mr. Joseph
6 come back and -- there seem to be a
7 misunderstanding, at least from my part, whether
8 or not a -- a contract exists or not. Mr. Joseph
9 has pointed out that it doesn't. You're saying
10 that it does. And if we can't come to some
11 agreement on this, then I'm not in favor of the
12 project because I'm not going to vote on something
13 that is against the intent of the statute.

14 ACTING CHAIRMAN MOORE: Mr. Joseph,
15 maybe we can divide this up into two questions.

16 Counsel for the Applicant has indicated
17 that they have a -- entered a contract with a
18 general contractor who has committed to provide a
19 skilled labor force. And then they have also
20 indicated that they would be willing to accept a
21 contract -- a condition that would require them to
22 obtain contracts for labor services for a Phase 2,
23 should it come about.

24 Does that satisfy what you were worried
25 about if it was embodied in a condition of

1 approval should this project pass?

2 MR. JOSEPH: No. And I am familiar with
3 the evidence that's been submitted about Valero's
4 contract with this general contractor. We don't
5 dispute that. They obviously do have a contract
6 with a general contractor, and that general
7 contractor obviously has many obligations under
8 its contract. And there's no -- there's no
9 dispute about the factual existence of a contract
10 with a general contractor for Phase 1, and that
11 there isn't one for Phase 2.

12 What I'm saying is that the contract
13 with the general contractor by itself does not
14 satisfy the two part requirement of Subsection
15 (3). And that if you were to move forward today,
16 or in two weeks, you would need to suspend the
17 second half of Subsection (3) because there isn't
18 a second contract for labor. This doesn't say
19 just have a contract with a general contractor.
20 It says a contract with a general contractor and
21 has a contract for skilled labor. Two things.

22 So there's no dispute that the first one
23 exists, and the second one does not exist.

24 ACTING CHAIRMAN MOORE: And -- and so if
25 that general contractor, who you suggest they do

1 have a valid contract with, were to show up, for
2 instance, in this hearing room, and say look, I
3 went out and I contracted with the construction
4 union of XYZed for services, and we've also gone
5 out to laborers' union of so and so, and here are
6 the contracts with those groups, that something
7 like that, in fact, would satisfy that second
8 section.

9 MR. JOSEPH: If there is a second
10 contract, yes.

11 ACTING CHAIRMAN MOORE: If -- in other
12 words, a showing that that contractor had in fact
13 made arrangements, that would satisfy you.

14 MR. JOSEPH: Not made arrangements. Not
15 made arrangements. That's what the statute used
16 to say.

17 ACTING CHAIRMAN MOORE: Well --

18 MR. JOSEPH: What the -- what the bill
19 said.

20 ACTING CHAIRMAN MOORE: -- by made
21 arrangements, I'm sorry if I'm not being precise.
22 Had gone out and in fact entered into a set of
23 contracts himself, or herself.

24 MR. JOSEPH: Yes. I think you can
25 construe that as being okay, we have the first

1 contract with the contractor, the second contract
2 for labor.

3 ACTING CHAIRMAN MOORE: Okay.

4 MS. NARDI: May we respond briefly to
5 that?

6 ACTING CHAIRMAN MOORE: I'm sorry?

7 MS. NARDI: May we respond briefly to
8 that?

9 ACTING CHAIRMAN MOORE: Sure.

10 MS. NARDI: And I'm glad to pass this
11 forward, maybe it would help people to look at it.

12 I don't see anything in the Public
13 Resources Code that requires two contracts. We've
14 got a contract for labor, and what our remedy
15 would be, if our contractor shows up and he
16 doesn't have a crew, or labor, we -- we would sue
17 him for breach of contract. We'd have all kinds
18 of remedies to -- to address that.

19 I don't see anything here that requires
20 second and third layers of contracts. Our --
21 we've provided a copy of this contract, and it's
22 in the materials that you've got. And it says, in
23 plain English, that the -- the contractor has to
24 supply labor. And their signature is at the back
25 page, and ours is there beside it.

1 So we -- we have a contact for labor.
2 I'm really missing the distinction here. We're
3 being really candid with you and telling you that
4 as to Phase 2, we don't, and we'll take a
5 condition.

6 ACTING CHAIRMAN MOORE; Well, I think
7 Mr. Joseph has also been pretty explicit about
8 what -- what he sees is missing there, and I think
9 it's -- we don't need to debate the subliminal
10 message in this. But it's -- it's pretty clear
11 what each party's asking for.

12 Commissioner Pernell, you have other
13 questions?

14 COMMISSIONER PERNELL: Yes. You have a
15 contract for labor. Is that to construct or to
16 operate?

17 MS. NARDI: We have a contract for labor
18 to engineer, design, and construct. And we're
19 going to use our own employees to operate and
20 maintain. And those -- and we have a declaration
21 from the refinery manager telling you
22 approximately how many people, and what their
23 qualifications are. They're -- they're trained
24 engineers. There's an engineering staff at
25 Valero. It runs on a 24-hour basis. There's

1 seven teams, and we're training engineers in each
2 of those teams to --

3 COMMISSIONER PERNELL: Well, wait a
4 minute. Wait a minute. You're training them now?

5 MS. NARDI: Well, they will be trained
6 if we can go. I believe -- you can ask Mr.
7 Hammonds. I believe some training has already
8 taken place. But the operation and maintenance
9 will be done by existing Valero employees.

10 ACTING CHAIRMAN MOORE: Who are already
11 employed by the plant.

12 MS. NARDI: Correct.

13 MR. HAMMONDS: That's correct. We have
14 four existing gas turbine installations that are
15 very similar to this, and we have trained
16 employees that operate it. Those are the same
17 kind of people who will be operating this, as
18 well.

19 ACTING CHAIRMAN MOORE: Are -- are those
20 -- any of those employees members of any kind of
21 specialized union?

22 MR. HAMMONDS: No, they aren't. We are
23 -- we are a non-union refinery. However, we use a
24 lot of union contractors in our plant.

25 ACTING CHAIRMAN MOORE: So some -- some

1 people who work in the plant are -- have union
2 affiliation, but the people who do your primary
3 operations and maintenance of the plant are not?

4 MR. HAMMONDS: Primary operations are
5 not union. A large part of our maintenance is
6 done by contractor workforce, and a large part of
7 those are union.

8 ACTING CHAIRMAN MOORE: It's not a
9 requirement by you that they be part of a union.

10 MR. HAMMONDS: Oh, no.

11 ACTING CHAIRMAN MOORE: You hire people
12 that bid for your service -- you bid for their
13 services, and then --

14 MR. HAMMONDS: That -- that is correct.

15 COMMISSIONER PERNELL: But, Mr.
16 Chairman, if I may. I don't want to turn this
17 into a union/non-union discussion. It says
18 skilled labor, and if you are training them, then
19 they're not skilled. You are training -- they're
20 in training. They are in apprenticeship, or
21 they're doing something. I mean, if you're going
22 to -- if you're going to train them, that's not
23 telling me that they're skilled labor. That's
24 telling me that you're training them.

25 MR. HAMMONDS: We have skilled people

1 who operate equipment just like this. As we
2 install a new facility, like any new facility, you
3 have to look very closely at the details of that
4 facility. What flowmeter reads what, and -- and
5 our operators will, of course, have to learn that,
6 as would anyone. They'll have to learn those
7 details. We would call that part of the training
8 involved in order to start up this facility.
9 Nobody knows those details yet.

10 MS. NARDI: And these are people with
11 environmental engineering qualifications. We're
12 not trying to take people who have like a non-
13 engineering job and teach them how to do this. We
14 have a whole staff of people who do this. But as
15 Mr. Hammonds points out, when you start on a new
16 piece of equipment you do some additional
17 orientation to that. But they are people who have
18 qualifications and skills for this type of job.
19 And they do the same job elsewhere in the
20 refinery.

21 ACTING CHAIRMAN MOORE: Thank you.
22 Thank you, Mr. Joseph. I appreciate your
23 comments.

24 Gentlemen, what I'd like to do is to ask
25 for your comments on this. I -- I have some that

1 I'd like to offer before we have a motion, so that
2 there's some sense by the members of what
3 direction we'd like to -- to go in.

4 All right, I'll -- I'll start. I --
5 I'll just say that, and perhaps it presages a
6 little bit of -- of what I've been thinking about
7 the four-month process. To me, we -- we've got a
8 quandary in front of us, mostly procedural, but
9 there -- there are some substantive issues that I
10 -- I trust will be worked out.

11 For my money, this is -- this is one of
12 the better projects that we could have come before
13 us. This project does exactly what we would like
14 to have done with the air quality problems, or the
15 air quality issues that affect a parallel
16 industry, in this case the petroleum industry and
17 the refining industry, and one which it seems to
18 me if we could make better use of in the future,
19 we would use to enjoy a better air quality
20 climate.

21 So on the stand of whether or not this
22 is a good project, whether it's appropriate,
23 whether it's timely, whether it's in the right
24 place, it seems to me it answers all of those --
25 all of those issues, and then some.

1 What it doesn't answer for me is -- and
2 it's really beyond the Applicant to be able to do
3 this -- is to be able to fix what is for me a
4 fundamentally flawed process. I think, and I
5 believe that we should take the responsibility for
6 it here, because we were part of the design for
7 that four-month process, and I think the four-
8 month process is inappropriate. I think that it
9 is not demonstrated as a need at this point. If
10 you look at the forecasts that we have been
11 issuing, you can see that we are in the process --
12 we're in the process, the contractors in the
13 state, the developers in the state are in the
14 process of creating enough supply to take us
15 comfortably through the next two years, and I
16 believe that the period of anxiety and the period
17 of emergency that the Governor addressed in his
18 Executive Orders has passed and is not well or
19 functionally addressed by the so-called four-month
20 process.

21 I think it requires too many suspensions
22 of the public good in order to get to the place
23 where we need to get to in the future. I will
24 note, however, that the process is one which
25 allows us to make a judgment as to whether or not

1 it applies or not, and I believe that it is our
2 duty, and I believe it is our responsibility to
3 take that up and not say that we -- we don't have
4 a role, that we are simply bound by something
5 which is, in fact, discretionary. And I hope that
6 we allow ourselves the full room of discretionary
7 actions in this activity tonight.

8 I believe that on the question of the
9 issue before us, that allowing for a further
10 discussion, allowing for the comfort, as Mr. Shean
11 has suggested in his conservative outlook of
12 taking this out to the 31st in order to allow some
13 additional time for some of the substantive issues
14 to be addressed, is appropriate and should be
15 taken up by us. I'll obviously defer to the
16 majority of my colleagues on this item, but I
17 believe that it is appropriate for us to allow a
18 little bit of extra time and invite the
19 representatives, especially from CURE, to take
20 advantage of this period and to try and rectify
21 what could be a major stumbling block.

22 I believe that the intentions of the
23 Applicant are -- are clear. I believe that in the
24 end, the intentions and the responsibility of the
25 representatives of CURE will be satisfied by

1 having a little bit of extra time to negotiate
2 those conditions and find them, in fact, cleared
3 up at the end of the process.

4 So it -- with regard to the project
5 itself, I think that that would be the appropriate
6 action for us to take tonight. I believe that one
7 addition to that would be the very thoughtful
8 inclusion that Commissioner Laurie has suggested,
9 that the matter of the Phase 2 be included as a
10 condition.

11 Now, on a broader scale, and this will
12 come up, I promise you, in the next item, let me
13 just say that I am dismayed, dismayed in the
14 broadest sense that I can, to find my Staff
15 advocating, advocating an action that is clearly
16 policy about how I should behave as a
17 Commissioner, how my colleagues should behave,
18 with regard to implementing a policy directive of
19 the Governor.

20 I believe that the good offices of our
21 Staff are utilized and demonstrated again and
22 again in these projects, and in the process,
23 because they have expertise, because they have a
24 depth of understanding and background, and that
25 when it is applied and when it is demonstrated to

1 the public that they apply that dispassionately,
2 objectively, and in a very sequential way, that
3 they serve the public interest and that they
4 better the process.

5 When a Staff document, or Staff
6 testimony argues that the best way to get to an
7 end, the best way to solve the energy crisis, the
8 best way to address an energy shortage is to take
9 some action, then you know what? I have to call
10 time out. That's the kind of opinion where I
11 expect them to offer in their offices, among
12 themselves, at home, in my office. But when they
13 come to this dais, and when they express an
14 opinion about a project, I expect it to be
15 absolutely academic, devoid of policy reference,
16 and, in fact, focused on the most objective and
17 realistic view of a project that is possible.

18 When a project is before us, I expect to
19 vote on the facts of it. When a policy is before
20 us, I expect to have facts presented to me
21 relative to that policy being implemented
22 properly, whether it's capable of being
23 implemented, whether it can be funded, whether, in
24 fact -- and thank God we have the Chief Counsel
25 who guides us on this kind of thing, and counsel

1 for the Staff, and counsel for the Applicants --
2 whether or not something is going to allow us to
3 proceed legally. I expect all of those opinions.

4 But only the five of us get paid to make
5 a policy decision. And when we are acting in
6 terms of trying to imagine whether or not there is
7 a policy directive out there, whether we're
8 complying with an energy emergency, I expect facts
9 to be presented to us, and I expect the policies
10 to be generated and implemented from this dais.
11 And I don't believe that in some of the actions
12 that we've been contemplating that we're able to
13 defend that position as realistically as we could
14 or should in the future.

15 So I hope that we proceed in the future
16 with a -- a clear set of directives to Applicants
17 so they know what arena they're playing in, where
18 they're likely to have to move forward or
19 backwards, and that when it comes to a matter of
20 whether or not a policy is appropriate or not,
21 that's left to the dais.

22 Commissioner Pernell, you asked for the
23 floor.

24 COMMISSIONER PERNELL: Thank you, Mr.
25 Chairman.

1 First let me say I'm -- I'm reminded of
2 what a elected official told me some time ago, and
3 that was never follow Speaker Willie Brown on a
4 speech, and I'm not sure that I should be
5 following you now, because you're -- you are on
6 point, and -- and your comments are relevant.

7 I want to -- I have a couple of things.
8 First of all, the four-month process, I agree
9 with, given our times. I think that if the
10 process is laid out the way in which we as policy
11 makers, if, in fact, the next item we approve it,
12 it will work. I'm not sure that all of those
13 things happened in this particular case. However,
14 the four-month process, I'm not opposed to. I
15 think in some instances it's needed.

16 But I have a different reason for having
17 concerns about this particular case. And I've
18 stated it before. And perhaps, given some time, I
19 can find out the qualifications of the -- of the
20 skilled workforce that Applicant has been talking
21 about. But I'm reminded of a newspaper article
22 that started out with "Cloud over Martinez". And
23 these refineries are having malfunctions quite
24 frequently, so I'm not comfortable with the
25 explanation of, well, you know, I got some

1 engineers that's running the refinery, and that
2 qualifies, but we've got to train them.

3 So, you know, it's -- this is not about,
4 for me, this is not about the four-month process.
5 I think this is a good project. I'm impressed
6 with the -- with the Applicant reaching out to the
7 community. I think that's important on all of
8 these cases. I'm impressed with that. But I'm
9 not impressed in terms of the intent of the
10 statute and whether you are meeting that intent.
11 And -- and to have -- maybe your timing is -- is
12 bad, because of what happened in Martinez. But
13 I'm not comfortable with having engineers from a
14 refinery that you got to train as definition of a
15 skilled workforce.

16 So, Mr. Chairman, I -- I am, however, of
17 a difference of opinion in terms of the four-month
18 process. I think that if that process is followed
19 properly, it will work.

20 ACTING CHAIRMAN MOORE: Thank you.

21 COMMISSIONER LAURIE: Mr. Chairman.

22 ACTING CHAIRMAN MOORE: Commissioner
23 Laurie, and then I'm going to turn to Commissioner
24 Keese.

25 COMMISSIONER LAURIE: Yeah. Well, first

1 of all, I -- I'm going to defer my comments until
2 I hear from the Presiding Member of my Committee,
3 Commissioner Rosenfeld.

4 But I -- I want the thermostat turned
5 down.

6 (Laughter.)

7 COMMISSIONER LAURIE: Can somebody do
8 that for us, please? I would add deja vu of my
9 high school locker room in here.

10 ACTING CHAIRMAN MOORE: Someone --
11 someone's moving to do just that.

12 Commissioner Keese --

13 COMMISSIONER ROSENFELD: I don't think
14 the thermostat'll do any good, but the fan's
15 running, and the fans quit at 4:00 o'clock.

16 ACTING CHAIRMAN MOORE: That's right,
17 the 4:00 o'clock reduction.

18 Commissioner Keese, do you have comments
19 that you would like to get on the floor?

20 CHAIRMAN KEESE: Right. I will defer on
21 the issue of whether the -- we take up the issue
22 today, or you postpone it for two weeks.
23 Unfortunately, I won't be able to attend at that
24 meeting, either.

25 However, I do have to disagree with

1 Commissioner Moore on the status of the
2 electricity situation. I do believe we're okay
3 for the rest of this year, because I do not
4 believe that we will have a heat storm while we
5 have 13,000 megawatts out for refurbishing. But
6 we are vulnerable.

7 I am not convinced whatsoever that in
8 the early months of next year, in the -- in the
9 spring and early summer, that we have enough
10 generation to handle any kind of an incident, that
11 we have enough generation to handle a dry winter,
12 that we have enough generation to handle the 40
13 percent reduction in imports we've received this
14 year. So I believe it is still critical that we
15 get some more facilities online in the early part
16 of next spring. Therefore, I believe it -- it
17 still remains, if you will, a crisis. I mean, I
18 don't -- I think there's a crisis because we don't
19 know what the weather situation will be, or the
20 rest of these parameters.

21 But we do know that we will not have
22 enough generation online to handle the situation
23 if we have the worst case scenario. So my
24 inclination is to go forward on all front and
25 continue the four-month process, and I -- I

1 believe continuing it through the end of this year
2 is an appropriate action.

3 As far as this specific project, I -- I
4 am convinced that this is an appropriate process
5 -- project. I believe that we've looked at it in
6 a four-month process, albeit a different four-
7 month process than typical. And I -- I see no
8 particular reason to thrust it over to a 12-month
9 process, or to just jeopardize the administrative
10 process we've used in adopting it.

11 I -- I have difficulty handling all the
12 nuances when I can't follow every sentence that's
13 being delivered there, so I will leave it to the
14 rest of the members to decide whether a decision
15 should be made today, or we should put this over
16 for two weeks.

17 ACTING CHAIRMAN MOORE: Bill, are you
18 going to have to go catch another plane right now?

19 CHAIRMAN KEESE: I'm on a plane.

20 ACTING CHAIRMAN MOORE: You're on a
21 plane. Okay.

22 (Laughter.)

23 ACTING CHAIRMAN MOORE; Well, then --
24 then stay with us through the vote on this, and
25 we'll take your comments as a position on the

1 following item.

2 Commissioner Rosenfeld.

3 COMMISSIONER ROSENFELD: First of all,
4 let me say that if it weren't for the fact that
5 the rains are coming, and I am uncomfortable about
6 next summer, like Commissioner Keese and
7 Commissioner Boyd, I do find it -- stating my
8 position painful, because I really am convinced
9 that CURE is really concerned, and that -- that
10 gets to me. I don't want to sit here and seem to
11 be ignoring Mr. Wolfe.

12 On the other hand, what I've gathered
13 through this long hearing is -- really just goes
14 to only about three points. The first one is that
15 this really does seem to be a good project. And
16 I'm pretty confident it's going to get built.
17 Then we come to the question of a two-week delay.
18 If this were July, I would say of course, a two-
19 week delay, so I wouldn't be concerned with the
20 four-month process issue. But it's not, it's
21 October 17th, and it is going to start raining
22 pretty soon. And to repeat the second point, I'm
23 still not completely comfortable about next
24 summer, and we're going to have lots of scares
25 with terrorism, and the idea of doing everything

1 that we can to make a refinery independent of the
2 grid seems important to me.

3 And so with some considerable
4 reluctance, I think I'm going to vote for the
5 four-month process.

6 ACTING CHAIRMAN MOORE: That is you're
7 -- you're voting to -- you're -- I'll accept that
8 as a motion to accept the Presiding Member's
9 Proposed Decision as written, which would have us
10 make a decision tonight, as opposed to the
11 alternative which Mr. Shean was offering, which
12 was to move to -- move the decision to the 31st.

13 COMMISSIONER ROSENFELD: Yes.

14 ACTING CHAIRMAN MOORE: All right. Is
15 there a second to the motion?

16 CHAIRMAN KEESE: I'll second the motion.

17 ACTING CHAIRMAN MOORE: Seconded by
18 Commissioner Keese.

19 The question is on the floor.

20 COMMISSIONER LAURIE: Mr. Chairman.

21 ACTING CHAIRMAN MOORE: On the motion,
22 Commissioner Laurie.

23 COMMISSIONER LAURIE: I cannot support
24 the motion. I think the project is an excellent
25 project. My concern is -- well, first of all, it

1 is not my -- my preference that we process this
2 project, that we make findings of this project
3 under the four-month process. There are questions
4 that are still hanging. And not only is it not my
5 preference that we not process this project under
6 the four-month process, it's really not my
7 preference that we waive the four-month process
8 after we've decided to utilize the four-month
9 process.

10 It is the opinion of our counsel that
11 this is a legal project under the 12-month
12 process, provided we wait two weeks, in which case
13 there's no issue about whether it's a simple
14 cycle. There's no issue about whether it's a
15 major stationary source, there's no issue about
16 whether there is a labor contract, which means we
17 don't have to waive anything. It means we are
18 following the law.

19 And all we have to do is close the
20 public hearing -- strike that. Keep the public
21 hearing open, and continue this item until our
22 next Business Meeting. Then all of those
23 questions go away.

24 ACTING CHAIRMAN MOORE: Commissioner
25 Laurie, if the -- if the motion were to fail, then

1 I'll accept a motion to continue the item and
2 reconsider this at -- on the 31st, which would
3 allow the Committee another -- Mr. Shean's looking
4 at me in a parliamentary sort of way. Come on up
5 to the microphone if you've got -- your Robert's
6 Rules of Order with you, I'm interested.

7 HEARING OFFICER SHEAN: What -- what I
8 want to make clear is that to supplement the
9 motion of Commissioner Rosenfeld, if it is the
10 will of the Commission to adopt this as a four-
11 month proceeding this evening, you not only need
12 to do the Proposed Decision as you have it before
13 you, but also to adopt the findings suggested by
14 the Staff in the Staff brief that was in the
15 accompanying material. That will round out the
16 package.

17 ACTING CHAIRMAN MOORE: Will -- will the
18 maker of the motion accept that clarification?

19 COMMISSIONER ROSENFELD: Sure.

20 ACTING CHAIRMAN MOORE: And a second?

21 HEARING OFFICER SHEAN: And I don't
22 know --

23 CHAIRMAN KEESE: Yes.

24 ACTING CHAIRMAN MOORE: All right.

25 HEARING OFFICER SHEAN: I beg your

1 pardon.

2 ACTING CHAIRMAN MOORE: That your
3 suggestion for clarification on the existing
4 motion is accepted.

5 I'm going to call for the question.

6 All those in favor of the motion signify
7 by saying aye.

8 (Ayes.)

9 ACTING CHAIRMAN MOORE: All those
10 opposed?

11 (Noes.)

12 ACTING CHAIRMAN MOORE: That motion
13 fails. And with that, I'm going to carry this
14 item over, and it will appear again on the 31st.
15 And I would ask for a thorough consideration of
16 the suggestions that have been made. I think the
17 intentions of the Commissioners are pretty plain,
18 and I would hope that there are some additional
19 discussions with CURE and -- and with the Staff,
20 and we'll see this again.

21 And I think when we see it again, given
22 that the intentions of the Commissioners are
23 pretty clear, we ought to have, along with what
24 Mr. Shean has just suggested, some -- a pretty
25 clear set of proposed findings that would find

1 this acceptable in the year process. So let's
2 make sure that when this comes back, should the
3 Commission decide to approve it, that that
4 condition of approval be -- be present.

5 And let me just -- just add one thing
6 before we let Commissioner Keese go, and wish him
7 Godspeed on his trip, and that is that I hope my
8 comments were not seen as saying that we have an
9 adequate supply today. I believe that the
10 forecasts that have been made by our own team
11 internally, and in coordination with the Siting
12 Division, suggest that we are in process of
13 creating enough supply to meet need, and that we
14 will be adequately serving that -- that need by
15 summer. So I -- I hope my remarks weren't
16 misinterpreted.

17 Commissioner Keese, Godspeed, and have a
18 good trip.

19 CHAIRMAN KEESE: Are you -- are you
20 taking up the other issue?

21 ACTING CHAIRMAN MOORE: Oh, I -- I
22 thought you said you had to go. No, we --

23 CHAIRMAN KEESE: No, I will --

24 COMMISSIONER ROSENFELD: He's stuck on
25 an airplane. We got him.

1 COMMISSIONER PERNELL: He can't go
2 anywhere.

3 ACTING CHAIRMAN MOORE: Well, I know,
4 but he could also be --

5 (Laughter.)

6 ACTING CHAIRMAN MOORE: -- we have a 15
7 percent cut coming. We could blow the whole
8 budget of this Commission on that one phone call
9 from the air.

10 (Laughter.)

11 ACTING CHAIRMAN MOORE: We'll have to
12 make this pretty fast.

13 All right. Well, welcome back,
14 Commissioner Keese. We'll continue this.

15 CHAIRMAN KEESE: I'm approaching --
16 we're approaching the California border. I'll be
17 aboard for another 45 minutes.

18 ACTING CHAIRMAN MOORE: All right. Here
19 we go.

20 Item 2. Let's take up Item 2, which is
21 a Commission Policy Discussion and possible
22 resolution pertaining to the waiver of statutory
23 provisions in Public Resources Code Section 25552
24 relating to the four-month licensing process.

25 And Counselor, I'm going to turn to you

1 to introduce the item. And each of the
2 Commissioners, and I believe there are available
3 out in back, there are copies of the proposed
4 revisions. So, Mr. Chamberlain, you have the
5 floor.

6 CHIEF COUNSEL CHAMBERLAIN: Thank you,
7 Mr. Chairman.

8 The item that you've just heard, of
9 course, was a consideration of the possible
10 approval of a four-month process. What this
11 resolution has to do with is determining whether
12 there are -- there are two provisions that were
13 originally -- originally put into AB 970, that --
14 one of which is the requirement to convert a
15 simple cycle to a cogeneration or combined cycle
16 within three years, and the other of which is the
17 major source requirement that we talked about
18 earlier -- whether those requirements ought to be
19 waived under Executive Order D2601 in order to
20 allow perhaps a half a dozen projects that we
21 understand are either already in the queue --
22 there are a couple of them on your agenda right
23 after this item -- or projects that may be filed
24 within the next few weeks to enter the four-month
25 process. That four-month process only applies to

1 projects that are to be constructed and brought
2 into operation during the year 2002, because
3 Section 25552 expires by its own terms on January
4 1st, 2003.

5 So what we're talking about, then, is a
6 resolution that the Commission has the authority
7 to adopt, if it chooses to do so, that would allow
8 projects that intend to remain simple cycle
9 projects beyond the three-year point to enter the
10 four-month process, and projects that may be major
11 sources. Now, that doesn't mean that they
12 wouldn't have to fully mitigate all of their
13 impacts during the course of that four-month
14 process, but it simply means that we would be
15 waiving that as an initial requirement for those
16 projects. And that resolution is before you.

17 I agree with your point that this is a
18 policy consideration for the Commission, and I'll
19 leave it at that.

20 ACTING CHAIRMAN MOORE: Thank you. And
21 has this matter come before the Siting Committee?

22 COMMISSIONER LAURIE: Not formally.

23 ACTING CHAIRMAN MOORE: Okay. So the
24 only --

25 COMMISSIONER PERNELL: We have had

1 discussions in --

2 ACTING CHAIRMAN MOORE: Understand. So
3 it's been discussed, and, of course, every member
4 has been discussing it.

5 COMMISSIONER LAURIE: There's no
6 recommendation on it.

7 ACTING CHAIRMAN MOORE: There's no
8 recommendation from the Siting Committee.

9 Mr. Therkelsen, do you want to add to
10 the Staff analysis and -- and proposal here?

11 DEPUTY DIRECTOR THERKELSEN: Well, the
12 -- actually, the real reasons I'm here is to
13 answer questions, if you have any. One of the
14 things I think that's very apparent from the last
15 item is that there is some policy confusion. And
16 Valero was the second four-month AFC to come
17 before the Commission. The first one after the
18 Executive Orders were issued, there were a number
19 of policy issues raised during the case, which
20 were not -- which were not obviously resolved.
21 The Staff had some major concerns and some
22 confusion on what to do with those policy issues.
23 Obviously, tonight there were still a lot of those
24 open issues.

25 One of the things that clearly the

1 legislature did was to establish a four-month
2 process, and a four-month process for projects to
3 be online by the end of December 2002. The
4 Executive Orders were implemented with the intent
5 of asking the Commission, ordering the Commission,
6 if you will, to take steps to be able to
7 expeditiously permit projects that would be
8 available for 2002. And in terms of making that
9 order, that was limited to projects that would be
10 online by August 1st of 2002. So there's a
11 different -- different timeframe there.

12 There's two issues that have been raised
13 relative to the four-month process by both the
14 Commission and Applicants. And those two issues
15 are the three-year limitation, if you will, and
16 the other one is the stationary source -- major
17 stationary source requirement. The Commission
18 actually recommended changes in SB 28x, relative
19 to both of those items. They recommended that the
20 legislation be amended to allow projects to go
21 through the four-month process that were major
22 stationary sources, and that were not required to
23 change to simple cycle, or from simple cycle after
24 three years. That was our recommendation.

25 The legislature did not take those items

1 up in the last days of the session, for whatever
2 reason. And therefore, I think it is appropriate
3 to bring this before the Commission to provide
4 some kind of guidance not only to the Staff, in
5 terms of making our determinations on data
6 adequacy, our determinations on after the 25-day
7 period of whether a project stays in the four-
8 month process, but also provide some kind of
9 certainty to Applicants what they're facing when
10 they come before the Commission.

11 So our -- our request is for some policy
12 guidance from you on those two items.

13 ACTING CHAIRMAN MOORE: Understand.
14 And, Mr. Therkelsen, since you were there during
15 this process as it developed, you were clearly
16 going back and forth to the legislature when the
17 language was -- was emerging. Can you go into the
18 -- into the issue of what the legislature, in your
19 opinion, expected when they inserted the phrase
20 "simple cycle plants". They obviously had before
21 them the possibility that they could say look,
22 permit this in an expedited way so as to bring on
23 combined cycle plants or any other thermal device
24 that might make a difference. They could've said
25 that.

1 But instead, they limited this language
2 to simple cycle plants, and then they absolutely
3 specified that -- but that -- three years is the
4 limit. At that point, you've got to come to the
5 game with the conventional device that will
6 provide the kind of air quality assurances that
7 we're looking for in the long term. So, crisis,
8 yes, but long term, we've got other social
9 responsibilities.

10 DEPUTY DIRECTOR THERKELSEN; And I think
11 in terms of the history of this, keep in mind that
12 this piece of legislation, this section of the act
13 was put in under AB 970. It was put in in August
14 of 2000, and the purpose of the law at that time
15 was to bring on power plants for 2001. And the
16 legislature, when they asked the Commission what
17 kind of projects can be brought online very
18 rapidly, with a filing date of October 31st of
19 2001, and can be online by the summer -- October
20 31st of 2000, and be online in the summer of 2000
21 and -- and we said based on our experience during
22 the summer of 2000 was temporary facilities.
23 They're going to be things not like the barge, but
24 like the barge and the land form. They were going
25 to be projects that could be rolled in, they could

1 be offloaded on skids and whatever else. Those
2 were the kind of projects we frankly expected to
3 see to respond to the emergency.

4 They were simple cycle projects, meaning
5 they did not have a -- a steam turbine component
6 to them. They could be put in rapidly. They had
7 minimum water requirements. They had minimum
8 size, minimum footprint. That's what we expected.
9 And the fear was, for most communities, for those
10 temporary facilities, is we don't want to live
11 with a temporary facility. Therefore, the
12 expectation was after three years, those temporary
13 facilities would either be taken out, or a
14 permanent facility be put in its place, and the
15 preference was a combined cycle or a cogeneration
16 facility.

17 When -- when the Governor then, in the
18 Executive Orders, was looking at how to respond to
19 clearly the emergency in 2002, but also provisions
20 to continue to bring additional supply on -- I'm
21 sorry, the emergency in 2001, but also measures to
22 bring additional supply on in 2002, he said what's
23 something that can be done, and the generation
24 team said you can revive Section 25552. That's
25 something that could be done.

1 But there still are some requirements,
2 problems, and the two problems we pointed out were
3 the three-year requirement and the major -- major
4 stationary source requirements that -- that
5 probably need to be waived. Realistically, you
6 want to have projects come online. And so that
7 was why the Executive Order reflected, in part,
8 the wording that it did.

9 When SB 28x was introduced, the
10 legislature simply took the existing law. And the
11 Commission indicated to them you have these two
12 provisions that are limiting, do you really want
13 to limit them. And the author of the bill said
14 no, we're -- we're very open to making these
15 changes. And because of all the turmoil that
16 existed over in the legislation, they -- the
17 legislature, they just did not go forward. And,
18 in fact, the bill's author has already told us
19 we're still willing to introduce that in the next
20 legislative session. So that's something that has
21 -- is being considered.

22 But if we want to provide guidance, we
23 need to provide guidance now.

24 ACTING CHAIRMAN MOORE: Well, the
25 relationship of a single cycle plant in the

1 original conception of AB 970 was that it was
2 needed to address an emergency situation, which we
3 all agreed, and which we worked very hard to
4 address.

5 DEPUTY DIRECTOR THERKELSEN: And that
6 they could be done quickly.

7 ACTING CHAIRMAN MOORE: Here. I'm
8 sorry, and they could be built very quickly.

9 DEPUTY DIRECTOR THERKELSEN: And they
10 could be -- a simple cycle project can be done in
11 -- in 90, 120 days.

12 ACTING CHAIRMAN MOORE: And come online
13 very, very quickly.

14 DEPUTY DIRECTOR THERKELSEN: A combined
15 cycle takes two years to build.

16 ACTING CHAIRMAN MOORE: So everyone who
17 entered that four-month process, and anyone who in
18 fact read either AB 970 or in fact read the
19 Executive Order D2601, was aware that the
20 requirement was one for speed and simplicity, and
21 we were going to cooperate at our end, but that it
22 carried a burden with it, and that burden was
23 whatever project you design, whatever your
24 engineer came up with, it had to be something that
25 could be converted or dismantled.

1 So going in understanding, any one that
2 applied or -- or looked at the language that
3 guided this, was that those kinds of provisions
4 prevailed.

5 DEPUTY DIRECTOR THERKELSEN: I think
6 correctly -- I think that's correct for AB 970. I
7 do not think that is correct under the Executive
8 Order. And you remember, under AB 970, we
9 received seven applications. One was for a -- a,
10 if you will, a permanent simple cycle that would
11 later convert. The other six were all for
12 temporary facilities that were going to be trucked
13 in and wheeled out.

14 But the Executive Orders, again, I think
15 people that looked at those anticipated that the
16 Executive Orders allowed the waiving of that
17 three-year provision.

18 ACTING CHAIRMAN MOORE: Well, that's --
19 that's, of course, a matter for discussion and --
20 and interpretation.

21 Commissioners, are there --

22 COMMISSIONER LAURIE: Question, Mr.
23 Chairman.

24 ACTING CHAIRMAN MOORE: Questions. Yes.

25 COMMISSIONER LAURIE: Mr. Therkelsen,

1 the power authority has issued letters of intent.
2 To what extent would those projects that have
3 responded, or -- or qualified for those LOIs fall
4 under the four-month process?

5 DEPUTY DIRECTOR THERKELSEN: In looking
6 at -- first of all, we have not done a detailed
7 review of all of those projects. We have had
8 Staff go to some of those projects. Some of those
9 letters of intent are with projects this
10 Commission has already permitted. Some of those
11 are ones that we're familiar with the sites, and
12 some we do not have much knowledge of the sites.

13 I can tell you that some of those sites
14 are permittable, and probably could satisfy the
15 provisions under the four-month process.

16 COMMISSIONER LAURIE: And they run into
17 the thousands of megawatts, do they not?

18 DEPUTY DIRECTOR THERKELSEN: They run
19 into the thousand megawatts?

20 COMMISSIONER LAURIE: Thousands of
21 megawatts.

22 DEPUTY DIRECTOR THERKELSEN: If -- if
23 you took all 19 of them and added up the
24 megawatts, yes, there's more than 1,000 megawatts.
25 Some of those projects, frankly, we think there

1 are going to be some significant environmental and
2 land use issues, and even if they qualified for
3 the four-month process, at the end of the 25-day
4 period they may be kicked out of it, because some
5 of those issues that exist on the projects.

6 The other thing is, all of those are --
7 those are letters of intents, they're not
8 contracts. When the Commission was considering
9 making these changes in the law it was before we
10 even knew about the power authority doing this.
11 And several of the projects that have asked for
12 clarification are not those that have power
13 authority LOIs.

14 CHIEF COUNSEL CHAMBERLAIN: Mr.
15 Chairman, may I add a little bit. I think Bob's
16 done a great job of describing the details of what
17 happened over time. But I would like to mention a
18 couple more points. And in particular, sort of
19 the flow of how it was happening, and that when
20 970 came through, there was a lot of discussion
21 about how to design a system that would to the
22 best -- given what the issues were, how to design
23 a system that would provide for the best possible
24 protection of the environment, also. And I think
25 that was a factor that went into the creation of a

1 four-month and a six-month process.

2 When the Executive Orders were -- were
3 approved, the thought was to try and provide some
4 protection, but under a 21-day system it's very
5 difficult, to say the least. And what one of the
6 concerns that I --

7 ACTING CHAIRMAN MOORE: You're not
8 suggesting that we didn't. You're just saying it
9 was difficult.

10 CHIEF COUNSEL CHAMBERLAIN: I'm not, at
11 all. No. I'm just saying that it's very
12 difficult. And when we -- when the 21-day process
13 came to an end, and we don't use it anymore, and
14 it's more or -- well, it's expired as of September
15 30th, what we have left to deal with is the four-
16 month process. And to my way of thinking, you
17 know, if you -- if you make the judgment that
18 there still are very serious energy issues out
19 there that we have to face, the four-month process
20 becomes very critical. And how we interpret the
21 definitions of it, how we use it, how quickly
22 we're able to make it into a useful tool to
23 address what's happening in the future, like the
24 very near future, then I think that's important.

25 Turning to the CPA, you know, to my

1 surprise, to some extent, the CPA is -- is
2 recently not been operating totally by itself, you
3 know, in that it's been thoughtful in a lot of
4 ways that it's presented information. And in
5 fact, when the Vice-Chairman of the CPA was
6 installed, in her introductory comments she said
7 that as far as she was concerned, she put peakers
8 down at the bottom of her list of things to do;
9 she thought conservation was the most important
10 thing to do.

11 I think that in discussing with some of
12 the representatives from the CPA about the LOI
13 type projects, what we find -- we find that the --
14 the perception has changed some. You know, I
15 don't really think they expect that all those
16 projects are going to go forward, and -- and end
17 up in our process. I think now they are looking
18 for those that can be the most effective, those
19 that can get through a four-month process, those
20 that can be put in the right place, if at all.
21 And so I think there's some real re-evaluation of
22 priorities in the CPA that we -- we need to be
23 aware of here, as we go forward.

24 ACTING CHAIRMAN MOORE: Commissioner
25 Pernell -- oh, I'm sorry. You have another

1 question. Sorry. Commissioner Laurie.

2 COMMISSIONER LAURIE: Mr. Therkelsen,
3 under the proposed resolution, you take 25552 and
4 note that there are a number of requirements
5 contained therein, and it is suggested that we
6 utilize the Governor's Executive Order to waive
7 some of those requirements. Is that correct?

8 DEPUTY DIRECTOR THERKELSEN: Yes, only
9 two of those requirements.

10 COMMISSIONER LAURIE: Why -- why are you
11 not proposing that we waive the requirement for a
12 skilled labor contract?

13 DEPUTY DIRECTOR THERKELSEN: I --
14 because we're not recommending that we waive that.

15 COMMISSIONER LAURIE: Well, I'm -- if
16 there is a -- if -- what's the rationale for only
17 picking selected --

18 DEPUTY DIRECTOR THERKELSEN: The -- the
19 reason for those --

20 COMMISSIONER LAURIE: -- portions of the
21 criteria?

22 DEPUTY DIRECTOR THERKELSEN: -- first of
23 all, is those are the two issues that through
24 Siting Committee and Legislative Committee
25 discussions were the ones that we had focused on

1 previously. And secondly, those are the ones
2 we've gotten the most comments and questions on
3 from applicants. So those two were the ones that
4 we focused on.

5 CHIEF COUNSEL CHAMBERLAIN: Commissioner
6 Laurie, I would also note that my interpretation
7 of the skilled labor requirement is really that
8 the legislature was trying to ensure that if the
9 Commission was going to devote the resources to
10 expediting a project, that in fact it would have
11 the ability to be constructed very quickly and
12 come online. And so --

13 ACTING CHAIRMAN MOORE: In other words,
14 that there was an adequate labor pool out there to
15 draw on, to get --

16 CHIEF COUNSEL CHAMBERLAIN: No. No,
17 that the Applicant actually had that labor pool
18 tied up by contract, to ensure that their project
19 really was going to go forward.

20 COMMISSIONER LAURIE: Okay. Now, I --

21 CHIEF COUNSEL CHAMBERLAIN: I would add,
22 too, that --

23 COMMISSIONER LAURIE: -- I question that
24 interpretation of legislative intent. I think
25 Commissioner Pernell would question that

1 interpretation, and --

2 CHIEF COUNSEL CHAMBERLAIN:

3 Commissioner, I would add, though, that in my
4 experience in the debates in the early period, in
5 particular, there was a concern about whether
6 there was adequate labor to be present. And --
7 and as it has worked through, you know, adequate
8 labor was found. But in the very beginning, when
9 we were first beginning to look at this process,
10 it came up, and it was very seriously addressed as
11 an issue.

12 COMMISSIONER LAURIE: Well, I know. And
13 then the language was changed. The language
14 started off saying ensure there is an adequate
15 labor pool, and then it was changed to say we want
16 a contract for skilled labor, meaning union labor,
17 in -- in the view of a lot of folks.

18 That's all the questions I have at this
19 time, Mr. Chairman.

20 ACTING CHAIRMAN MOORE: Commissioner
21 Pernell.

22 COMMISSIONER PERNELL: Thank you, Mr.
23 Chairman.

24 Let me try and get back to the
25 resolution. And for the purpose of those who

1 don't have it before you, Mr. Therkelsen, it is my
2 understanding that this only applies to
3 applications that is complete and come before us,
4 before December 31st of this year.

5 DEPUTY DIRECTOR THERKELSEN: That's
6 correct.

7 COMMISSIONER PERNELL: So we really are
8 only talking about two and a half months.

9 DEPUTY DIRECTOR THERKELSEN: That's
10 correct. The Executive Order expires on December
11 31st. So this ability, if you will, to waive
12 anything under the Executive Order no longer
13 exists after December 31st. The other thing to
14 keep in mind is the Executive Order was very clear
15 that it applied to projects that would be online
16 by August 1st of 2002.

17 COMMISSIONER PERNELL: That's all I
18 have, Mr. Chairman.

19 ACTING CHAIRMAN MOORE: Thank you. And
20 I might not have been clear enough in my remarks
21 before. There are only two ways for the public to
22 get out of the building legally. You can --

23 (Laughter.)

24 ACTING CHAIRMAN MOORE: -- you can use
25 the security guards to get out the front door, or

1 you can go out the P Street door, but you've got
2 to have one of the secret cards to get out without
3 setting off the alarm out of the back door.

4 Commissioner Keese, are you still with
5 us?

6 CHAIRMAN KEESE: Yes.

7 ACTING CHAIRMAN MOORE: Do you have
8 questions?

9 CHAIRMAN KEESE: No, I -- I'm with it so
10 far.

11 ACTING CHAIRMAN MOORE: All right.
12 Commissioner Rosenfeld, do you have questions?

13 COMMISSIONER ROSENFELD: No.

14 ACTING CHAIRMAN MOORE: All right. We
15 have a proposed resolution before us, and I would
16 welcome a -- I'm sorry. Even though this is not
17 specifically a public item, we did have a request
18 to comment on this, I think, from Mr. Wolfe. Do
19 you want to -- no, he's saying no. All right.

20 Is there anyone else who's burning up
21 with a desire to comment on this item?

22 Seeing none, gentlemen, I await your
23 pleasure.

24 COMMISSIONER PERNELL: Mr. Chairman.

25 ACTING CHAIRMAN MOORE: Commissioner

1 Pernell.

2 COMMISSIONER PERNELL: Mr. Chairman, I
3 would move the proposed resolution regarding the
4 four-month AFC -- AFCs.

5 ACTING CHAIRMAN MOORE: That's the
6 proposed resolution that is before us. It's dated
7 10/16/01, and it is brought to us --

8 COMMISSIONER LAURIE: Actually it's 10
9 -- there's a revised 10/17/01.

10 COMMISSIONER PERNELL: 10/17.

11 ACTING CHAIRMAN MOORE: Then I am
12 looking at the wrong version. Okay, the revised,
13 which is 10/17. All right.

14 Is there -- is there a second to the
15 motion?

16 COMMISSIONER ROSENFELD: Second.

17 ACTING CHAIRMAN MOORE: Seconded by
18 Commissioner Rosenfeld.

19 Discussion on the motion.

20 COMMISSIONER LAURIE: Mr. Chairman.

21 ACTING CHAIRMAN MOORE: Commissioner
22 Laurie.

23 COMMISSIONER LAURIE: I am going to
24 speak against the motion.

25 I've expressed my view to Staff and

1 others regarding my concerns about the public
2 policy involved in what we are seeking to do
3 today. I have to admit that I did not participate
4 in the creation of this section of the law. It
5 was presented to me, and I did not -- I did not
6 read it with great joy, because I was concerned
7 about the implications of it.

8 We have taken a number of actions during
9 the last two years that I believe have been very
10 short-sighted. I think we have attempted to
11 address many complex issues by short-term fixes
12 which are turning out to be inimical to good and
13 proper public policy.

14 I've asked the question, and there
15 certainly is no answer today, as to what are the
16 market implications of approving a multitude of
17 simple cycle projects. The public policy goal, I
18 suppose, is to absolutely positively guarantee at
19 any price that there's going to be an
20 overabundance of electricity during the important
21 year of 2002, with no thought given how does that
22 affect our ability to produce electricity beyond
23 the short term. What impact do all these simple
24 cycle projects have on the market if, in fact, the
25 power authority goes through with their proposals,

1 and issues letters of intent for literally
2 thousands of megawatts. What does that do for
3 alternative type of projects.

4 Nobody's thinking about that today.
5 When the legislature has asked recently where has
6 the planning been, our only excuse has been well,
7 we were really told that there's really no place
8 for that in the competitive market. And we knew
9 we were wrong when we offered that indefensible
10 excuse, and we would be wrong today if we again
11 argued that we should not be thinking and planning
12 and considering long-term implications of our
13 policy decisions.

14 I am not satisfied that the conditions
15 exist that would support a waiver of the current
16 law in order to produce more simple cycle projects
17 today. I'm certainly prepared to follow the law
18 as it reads today. The legislature had and has
19 the ability to modify the law as it sees fit. It
20 has chosen not to do so, yet. When it does, we
21 will follow that law.

22 So I think the question posed is do the
23 circumstances today require a waiver of the law,
24 and I believe those conditions do not exist today.
25 I believe that what we need today is a stable

1 market. I believe what we need today is a clear
2 signal out of the power authority as to what their
3 true intentions are. I think what we need today
4 is an understanding of what the impacts are,
5 environmental and market, of thousands of
6 megawatts of simple cycle power.

7 We have not examined the cumulative
8 impacts of those simple cycle projects. We have
9 not examined the alternatives to those simple
10 cycle projects. I believe we are legally
11 obligated to do so. It is called thinking; it is
12 called planning. I do not believe this action is
13 consistent with that, Mr. Chairman, and in that
14 light, I will not support the motion.

15 ACTING CHAIRMAN MOORE: Thank you.

16 Commissioner Keese, do you have comments
17 on that, on the motion?

18 CHAIRMAN KEESE: Yes, I do. And in the
19 most generic sense, I would agree with
20 Commissioner Laurie that we may have made
21 mistakes. I'm not sure that many of the mistakes
22 reside with the Energy Commission. I believe that
23 we need to move forward. I, in my mind, believe
24 that a simple cycle plant cannot possibly compete
25 with a combined cycle generating facility in the

1 long run. And therefore, I think we need it in
2 the short term, as our backup, but in the long
3 term, since it won't compete, it won't be around
4 to do -- to bear a significant portion of the
5 generating load. It may bear that peaking load
6 that we need when we have an anomaly, a heat storm
7 or some other reasons for shortage.

8 So I'm -- I am not convinced that we yet
9 have enough generation to handle the spring and
10 early summer next year. I think that it is
11 totally appropriate to consider it a potential
12 crisis for next year, and if individuals wish to
13 invest the funds to go forward, and if other
14 entities in state government wish to contract for
15 those resources, I don't think we should second-
16 guess their decision.

17 I don't believe that we're obligated to
18 accept every proposal that comes before us, but I
19 -- I don't see an overabundance of projects yet
20 that -- that swamp the system. As we go down the
21 line, I'm not sure how much generation we need.
22 We know that our fleet of generating units is over
23 30 years old. We know that our nuclear plants are
24 in jeopardy. We know that in a dry year we don't
25 get our hydro production. We know that our

1 imports were down 40 percent last year. We -- we
2 have an unquantifiable need for new generation.

3 I agree, absolutely, that we need
4 planning, we need analysis, and -- and I would
5 only differ with Commissioner Laurie that I don't
6 believe we've ever said we didn't need that. It
7 has been other people telling us that that was not
8 needed, and in most cases I believe they now know
9 better, and support the Energy Commission, and
10 perhaps others doing that critical analysis. So I
11 am in support of the motion.

12 ACTING CHAIRMAN MOORE: All right. On
13 the motion, I'm going to oppose the motion, and I
14 urge my colleagues who made the motion and
15 seconded the motion to reconsider their votes and
16 vote against the motion as it's before you. I
17 think that this resolution fails so many
18 fundamental tests that it's almost inexcusable.

19 This resolution and the items, or the
20 intent that is encompassed in it has not been
21 through a policy debate at this Commission, it has
22 not been through a vetted committee debate where I
23 would expect a recommendation from my colleagues.
24 It does not come to us with an analysis of the
25 cumulative impacts that would ensue from a raft of

1 new projects built to simple cycle mode. It does
2 not take on the -- or address the fundamental
3 question of where the strategic location of any of
4 these projects likely should be, or will be in the
5 future. It's a reactionary document that
6 attempts, in my opinion, to toady up to the
7 industry, which would like to have projects done
8 as fast as possible, and wherever they would like
9 them.

10 Well, you know what? If I was in
11 business, I would probably want the same thing.
12 But I'm not, or I'm not, this day. I'm in the
13 public policy arena. I'm a public official. I do
14 not have a responsibility to simply bend over for
15 any developer who wants to come in and get the
16 fastest possible processing time for their
17 project, irregardless of the public interest. I
18 am here to represent the public interest. I am
19 here to create a process and to uphold a process
20 which takes the broadest public benefit into
21 account.

22 The Executive Order being what it is, it
23 says what it does, and it does not say what this
24 resolution interprets. Whether I agreed with it
25 or not when the Governor did it, whether I agreed

1 with 970, AB 970 or not when it was passed is
2 irrelevant now. But none of that does anything to
3 adjust the process that we so ardently ought to
4 pursue here, in cooperation with our federal
5 colleagues, in cooperation with our neighbors in
6 -- in other states, in trying to understand the
7 whole of the system and where the proper
8 improvements ought to be made.

9 I believe that Commissioner Keese and I,
10 for instance, have an honest disagreement about
11 what the statistics show us about the satisfaction
12 of the supply chain in the future. But I think
13 that we need to look to our own house and need to
14 look to our own procedures to understand why this
15 is a bad resolution for us to pass, and why this
16 leads us down a bad path, and one which becomes
17 increasingly difficult to extricate ourselves
18 from.

19 We need to be exemplary servants of the
20 public interest. We need to remember the intent
21 of the Warren-Alquist Act, which has us rise above
22 short-term perturbations and market behavior, or
23 short-term fluctuations in demand or crisis, which
24 will pass, and which, I think, means that we have
25 to have a longer term -- as I've said many, many

1 times -- a longer term discount rate in our
2 decisions, and try to imagine a world in which we
3 say what we mean, and we stick by it, and we don't
4 cause rules to fluctuate. We discomfit other
5 actors later in the market by the act of doing
6 something like this.

7 I understand the change in language that
8 Commissioner Pernell sought out and achieved in
9 order to try and make this more workable, and I
10 commend him for that, and I thank him for that, in
11 fact, which I appreciate. I don't think it gets
12 us out of the bind that we're in, and the bind is
13 not in the market; the bind is in our own house.
14 We need to look to our own house, and we need to
15 create a -- a long-term strategic planning process
16 that imagines the state as it ought to be and as
17 it ought to function, and you know what, if we
18 can't do that, if we can't stand up and get to
19 that place, if all we're going to do is create
20 stuff like this, then you know what? We ought to
21 quit and go join the CPA.

22 All in favor of that motion, signify by
23 saying aye.

24 (Ayes.)

25 ACTING CHAIRMAN MOORE: All opposed?

1 (Noes.)

2 ACTING CHAIRMAN MOORE: That motion
3 carries, three to two.

4 Well, that brings us back to the rest of
5 the agenda. And for those of you who have been
6 patient enough to -- to wait with us, I bring you
7 back to -- bring you back to Item 7, the GWF
8 Energy, LLC Henrietta Peaker Project. That's our
9 consideration of the Executive Director's Data
10 Adequacy Recommendation for the Henrietta Peaker
11 Project, a four-month, 91.4 megawatt power plant
12 located in Kings County, that's Docket 01-AFC-18.

13 And Mr. Richards.

14 MR. RICHINS: My name is Paul Richins,
15 and to my right is Staff Attorney for this case,
16 Lisa DeCarlo. I'll make our -- our remarks real
17 quick.

18 This is an item that came before you
19 previously for data adequacy. At that time you
20 determined that it was not complete. They have --
21 the Applicant, GWF Henrietta, has provided
22 additional information. Staff has reviewed that
23 additional information, and we're before you here
24 to recommend that the project be data adequate.

25 A couple of unique things about this

1 particular project. It is a simple cycle project,
2 91 megawatts, as was previously indicated. GWF
3 Henrietta has a contract for ten years to provide
4 power in the simple cycle mode to Department of
5 Water Resources, or has a DWR contract. They do
6 not have plans to convert to combined cycle, and
7 so although we do recommend that this project be
8 data adequate, there is one issue outstanding that
9 you just addressed, and we would recommend that
10 you adopt our provisions and also the order that's
11 attached to the Executive Director's
12 recommendation.

13 ACTING CHAIRMAN MOORE: Thank you, Mr.
14 Richins, and I'm sorry I mispronounced your name
15 when I introduced you.

16 For the Applicant.

17 MR. GRATTAN: John Grattan, and it's
18 been a long evening.

19 ACTING CHAIRMAN MOORE: Hasn't it. You
20 should be on this side.

21 (Laughter.)

22 MR. GRATTAN: We all squirmed as the
23 little ship of state sailed through the rough seas
24 of policy here.

25 ACTING CHAIRMAN MOORE: Really.

1 MR. GRATTAN: I don't want to deal with
2 policy anymore. I'll speak -- we have another
3 project up, the Tracy project, and you can
4 attribute my remarks to both of them.

5 We've got -- we've got some very good
6 facts here. We have -- everything has not been
7 easy. We have gone round and round with Staff on
8 this data adequacy run, and Staff did not let us
9 off easy. One Staff member said these
10 applications need to be data rich, not data lean.
11 We finally got a data rich application.

12 We heard talk here before of the project
13 needing an FDOC, and how that fit in with the
14 Presiding Member's Proposed Decision. The
15 Henrietta Project already has an FDOC. We are
16 part of a habitat conservation plan, the land use
17 is conforming. This is a simple cycle project
18 that has emissions that rival combined cycle, I
19 think 3.7 NOx.

20 We agree with the Staff recommendation.
21 We hope the policy issue has been dealt with, and
22 I've probably been too lengthy.

23 ACTING CHAIRMAN MOORE: Well --

24 COMMISSIONER LAURIE: Question, Mr.
25 Chairman.

1 ACTING CHAIRMAN MOORE: Commissioner
2 Laurie.

3 COMMISSIONER LAURIE: I'm sorry. Go
4 ahead.

5 ACTING CHAIRMAN MOORE: No, go ahead.

6 COMMISSIONER LAURIE: Mr. Richins, this
7 project is only data adequate with the
8 implementation of the resolution just adopted by
9 the Commission?

10 MR. RICHINS: That's correct.

11 COMMISSIONER LAURIE: Okay. And -- and
12 how so? What -- what would ordinarily be lacking?

13 MR. RICHINS: Just the three-year
14 conversion. They are a simple cycle project, and
15 they do not plan to convert after three years, so
16 that's the only --

17 COMMISSIONER LAURIE: And that's --
18 that's the reason Mr. Grattan so ceremoniously
19 threw in the NOx emissions, to make us comfortable
20 with the --

21 MR. GRATTAN: That's correct. That is
22 correct.

23 COMMISSIONER LAURIE: -- the extension
24 of that. So the question, is the resolution just
25 adopted in force and effect at this time that

1 would allow us to make the appropriate finding?

2 ACTING CHAIRMAN MOORE: I think it is.

3 I -- counsel? Are you sure? Mr. Chamberlain?

4 (Laughter.)

5 CHIEF COUNSEL CHAMBERLAIN: Well, it's
6 in the transcript. I -- I believe the
7 Commission's policy is clear now.

8 COMMISSIONER LAURIE: That's all I had,
9 Mr. Chairman.

10 ACTING CHAIRMAN MOORE: Mr. Grattan, are
11 you at liberty to reveal any of the details of
12 that contract with DWR to us?

13 MR. GRATTAN: I'm -- I'm not really at
14 liberty, because I don't know them. It's -- it's
15 a ten-year --

16 ACTING CHAIRMAN MOORE: Sounds like all
17 the other DWR contracts that we -- we know about.

18 MR. GRATTAN: -- contract.

19 ACTING CHAIRMAN MOORE: We don't know
20 them.

21 Is there anyone here who'd like to
22 address this issue from the public?

23 Gentlemen, your pleasure.

24 COMMISSIONER LAURIE: Move the
25 recommendation, Mr. Chairman.

1 COMMISSIONER PERNELL: Second.

2 ACTING CHAIRMAN MOORE: The motion.

3 Second by Commissioner Pernell.

4 Discussion on the motion.

5 All those in favor signify by saying

6 aye.

7 (Ayes.)

8 ACTING CHAIRMAN MOORE: Those opposed?

9 The motion carries, five to zero.

10 And on that, I'm going to assign a

11 committee to that, and I'm going to assign

12 Commissioner Rosenfeld to preside, and myself to

13 be Second Member.

14 COMMISSIONER PERNELL: Move the

15 Chairman's recommendation.

16 ACTING CHAIRMAN MOORE: Moved by

17 Commissioner Pernell.

18 COMMISSIONER LAURIE: Second.

19 ACTING CHAIRMAN MOORE: Second by

20 Commissioner Laurie.

21 All those in favor signify by saying

22 aye.

23 (Ayes.)

24 ACTING CHAIRMAN MOORE: That motion

25 carries, five to zero.

1 Let's take the Tracy Peaker Project, and
2 since we don't have to ask Mr. Grattan to get up
3 and sit down, welcome back. Mr. Richins, you're
4 going to introduce this, as well?

5 MR. RICHINS: Yeah. My name, again, is
6 Paul Richins, the same as before.

7 ACTING CHAIRMAN MOORE: Yeah, and I got
8 it right this time.

9 MR. RICHINS: And pretty much the -- the
10 facts that we just discussed about GWF Henrietta
11 apply to this case, GWF Tracy. It came in, it was
12 inadequate initially. We received additional
13 information, and it was then Staff's
14 recommendation at this Business Meeting that it be
15 deemed data adequate. And the only outstanding
16 issue is the ten-year contract of simple cycle
17 where they do not plan to convert. The previous
18 action taken by this Commission would take care of
19 that particular item.

20 ACTING CHAIRMAN MOORE: I'm assuming
21 that you don't have anything to add to that, Mr.
22 Grattan, other than thank you for the
23 recommendation.

24 MR. GRATTAN: That's -- that's correct.

25 ACTING CHAIRMAN MOORE: That's what I

1 thought you were going to say.

2 COMMISSIONER LAURIE: Move the
3 recommendation.

4 ACTING CHAIRMAN MOORE: Moved by
5 Commissioner Laurie --

6 COMMISSIONER LAURIE: I'm sorry, we
7 didn't ask for public input.

8 ACTING CHAIRMAN MOORE: Is there anyone
9 who would wish to climb on that boat, as well?

10 COMMISSIONER PERNELL: Well, I have a
11 question, Mr. Chairman.

12 ACTING CHAIRMAN MOORE: Let's get a
13 motion on the floor. I'll second the motion.

14 Commissioner Pernell, on the motion.

15 COMMISSIONER PERNELL: Yeah. Thank you,
16 Mr. Chairman. On the motion, Mr. Grattan is -- is
17 sitting very still, but the last item he was just
18 all over that chair, and I'm wondering was that
19 the decaf coffee you were drinking.

20 MR. GRATTAN: I was all over that chair.
21 You bet it was.

22 (Laughter.)

23 ACTING COMMISSIONER MOORE: He's still
24 nervous from the last decision.

25 MR. GRATTAN: We're getting pretty

1 personal here.

2 ACTING COMMISSIONER MOORE: Any other
3 comments on the motion?

4 All those in favor signify by saying
5 aye.

6 (Ayes.)

7 ACTING CHAIRMAN MOORE: Those opposed?

8 CHAIRMAN KEESE: Aye.

9 ACTING CHAIRMAN MOORE: With -- that's a
10 -- we accept the fact that you're -- you're many
11 thousands of miles away, Commissioner.

12 That motion carries, five to zero.

13 For Committee assignment, I'm going to
14 ask Commissioner Pernell to preside, and
15 Commissioner Laurie to be Second Member.

16 Motion by Pernell, second by Rosenfeld.

17 All those in favor signify by saying
18 aye.

19 (Ayes.)

20 ACTING CHAIRMAN MOORE: Opposed?

21 The motion carries, six to zero, with
22 Mr. Grattan voting ex officio.

23 All right. With that, I want to -- I
24 want to bring one other item up. Under -- I -- I
25 have Committee items that I want to bring up.

1 MS. McCANN: We have minutes --

2 ACTING CHAIRMAN MOORE: And, all right.
3 We'll take the other business items. Mr.
4 Executive Director, do you have anything that
5 you'd like to add?

6 EXECUTIVE DIRECTOR LARSON: No.

7 ACTING CHAIRMAN MOORE: And Counselor, I
8 understand you'd like to have a closed session,
9 which we'll accommodate immediately after this
10 meeting in Commissioner Rosenfeld's office.

11 CHIEF COUNSEL CHAMBERLAIN: Very good.
12 Mr. Chairman, if that's the case, then I also have
13 an item that I want to bring up regarding
14 personnel, that relates to --

15 ACTING CHAIRMAN MOORE: In -- in
16 Executive Session. All right. We'll do that.
17 And Public Adviser?

18 PUBLIC ADVISER MENDONCA: Mr. Chairman,
19 there is nothing specific this evening.

20 ACTING CHAIRMAN MOORE: All right.
21 Thank you.

22 Minutes. Do we have -- no minutes.
23 Thank you for taking us down that road, Ms.
24 McCann, and then dropping us off the cliff on
25 that.

1 All right. I have one other item, and
2 that is one of a policy matter that I would like
3 us to think about. Commissioner Pernell referred
4 to the item that I'd like to bring up, and that is
5 that there was a -- an activity at one of the
6 refineries which may cause a slow-down in refinery
7 capacity, and which could affect overall petroleum
8 supplies in the state. This has happened now
9 twice in this week, and some of the ramifications
10 of it are things that we can discuss in committee
11 or among -- among ourselves.

12 But I will just say that we have a
13 process in the Commission for dealing with what in
14 the old world of air quality would be an upset
15 breakdown of some kind, and so we have procedures
16 that allow us to think about these things when
17 they happen.

18 And it seems to me that part of -- part
19 of what's happened here in the rush to try and
20 address, and very ably, I hope that this gets out
21 to -- to the employees that every one of the
22 Commissioners is very, very supportive of the very
23 able job that the employees have done and that --
24 just I don't want to start losing them to the air
25 quality districts, because they do so much better

1 job doing the PDOCs than the air quality districts
2 do.

3 But we've had -- we've had Staff
4 reassignments, we've had commitments of Staff to
5 other loads that they've had to take on, and it's
6 left us I think vulnerable in some other areas.
7 And public safety areas are ones that we need to
8 pay particular attention to. These events in the
9 past weeks make it clear that the Commissioners
10 ought to be advised earlier, using some of the
11 older protocols that we had that allow us to have
12 matters come up before the appropriate committees,
13 especially when there might, or is some sort of
14 emergency taking place.

15 Now, these items in Martinez on the
16 refineries don't qualify as an emergency, but they
17 certainly will have an impact on policy making, on
18 prices, and on the behavior of the market in the
19 state. These are functions that we're required by
20 law to advise the Governor, and through him the
21 legislature and the appropriate committees and
22 leaders in the legislature about. We can't do
23 that if we don't get timely advice. We can't get
24 timely advice if we don't have a network of
25 information gathering set up so that we can

1 continuously monitor what the market is doing.

2 I want to make sure that we are all
3 operating from the same page, and that page is
4 that we have a set of protocols that are in
5 effect, we need to observe those protocols, and
6 make sure that when there is information about a
7 change in market behavior, when there's an upset,
8 when there's a breakdown that could or is
9 affecting the market, and we need to advise the
10 Governor or other government agencies, that we're
11 prepared and actually follow that protocol in
12 doing that.

13 I believe that that means that some of
14 the staffing assignments that we've made need to
15 be critically examined in order to make sure that
16 we are continuing our earlier efforts, the ones
17 that we've perfected, in fact, of gathering
18 information and seeking out market advice get back
19 on track, so that we can -- and I realize that
20 that's -- that's asking a lot from the Staff that
21 is stretched pretty thin, but I don't think
22 there's -- there's any substitute for it. And
23 frankly, I think that this incident, while not a
24 major one, points up the need to get back into
25 stride as far as how to get information flowing

1 through the Commissioners' offices, through the
2 appropriate committees, in a timely way and get it
3 out in the form of situation reports, or advice to
4 the other agencies that we work with.

5 CHIEF COUNSEL CHAMBERLAIN: Mr.
6 Chairman, though I didn't hear about this incident
7 from you, I did hear it from other Staff, and I've
8 taken steps to make sure that it's handled in an
9 appropriate way. I apologize for the lack of
10 communication, and we'll try to make sure it
11 doesn't happen in the future.

12 ACTING CHAIRMAN MOORE: But I think that
13 -- that the -- and really, there's no -- accepted.
14 But I think what's -- what's really important here
15 is for us to take this not minor, but -- but still
16 not major event, use it, and say you know what, we
17 had a good process before, let's get that back
18 working again, and make sure that all five of us
19 are operating on the same plane with regard to an
20 exchange of emergency information, and that
21 includes the kind of briefings that we might need
22 in the future to allow us to give good advice to
23 the Governor or to other public agencies.

24 And I won't go into that anymore, unless
25 in Executive Session. So, other items. Anyone in

1 the public who didn't get a chance to speak
2 tonight?

3 Seeing none, we will adjourn.

4 CHAIRMAN KEESE: No, I --

5 ACTING CHAIRMAN MOORE: Oh, I'm sorry.
6 Don't --

7 CHAIRMAN KEESE: I do have a question.
8 I do have a question there. I'm willing to be
9 briefed tomorrow morning. Is it -- if you -- I
10 have another 20 minutes on the airplane here. I
11 will call in to another number if you would like
12 that.

13 ACTING CHAIRMAN MOORE: Yes. And I'm
14 going to ask Betty to give that to you after --

15 COMMISSIONER ROSENFELD: I have a
16 speakerphone in my office.

17 ACTING CHAIRMAN MOORE: That's right.
18 That's why we're going to your office. It's
19 actually my speakerphone that you borrowed, but --
20 I don't want to belabor that. Possession is nine-
21 tenths of the law. So Betty's going to give you
22 your number, and we'll be up there in your office
23 in five minutes. We are adjourned to an Executive
24 Session. Thank you all for bearing with us.

25 (Thereupon the Business Meeting was
adjourned at 9:00 p.m.)

CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Meeting, nor in any way interested in the outcome of said Meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of October, 2001.

JAMES RAMOS

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